

A GUIDE
TO
MAGISTRATES
OUT OF SESSIONS,
INCLUDING
A DIGEST OF THE POOR LAWS,
WITH
Practical Forms
OF
ORDERS, COMMITMENTS, AND CONVICTIONS.

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IN TWO VOLUMES.
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A

PRACTICAL GUIDE TO MAGISTRATES OUT OF SESSIONS.

Poor.

THIS comprehensive title, it is proposed to consider according to the following arrangement:

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I. OF THE POOR LAW COMMISSIONERS.

Their Powers.—By 4 & 5 Will. 4, c. 76, s. 15, the administration of relief to the poor throughout England and Wales is declared to be subject to the direction and control of the Poor Law Commissioners, who may make all such rules, orders and regulations for the management of the poor, for the government of workhouses, and the education of the children therein, and for the management of parish poor children within the bills of mortality under the 7 Geo. 3, c. 39, and the superintending, inspecting and regulating of the houses wherein such poor children are kept and maintained, and for apprenticing the children of poor persons, and for the guidance and control of all guardians, vestries, and parish officers, so far as relates to the management or relief of the poor, and the keeping, examining, auditing and allowing of accounts, and making and entering into contracts in all matters relating to such management or relief, or to any expenditure for the relief of the poor, as they shall think proper. But they have no power to interfere in any individual case, for the purpose of ordinary relief.

By 5 & 6 Vict. c. 57, s. 1, the Commissioners are to hold their office until the 31st July, 1847, and thenceforth until the end of the then next session of parliament: and by *sect. 2*, there are not to be more than nine assistant commissioners; but whenever it may seem fitting to the Commissioners, they may appoint, under certain restrictions, one other person, or more, to act as an assistant commissioner,

for the purpose of any special inquiry, for a period not exceeding thirty days (a).

Where any act directed by the Commissioners is clearly within their power, the Court of Queen's Bench will not entertain the question, whether they have exercised a sound discretion (b), but will grant a *mandamus* to compel an obedience to their order; as in the instance of an order from them to the guardians of an union to appoint a chaplain for the union workhouse, with a salary (c).

General Rules.—By 4 & 5 Will. 4, c. 76, s. 16, no general rule of the Commissioners shall take effect until forty days after it shall have been submitted to one of the Secretaries of State; and if in that period it shall be disallowed by the King in council, it shall not come into operation; or if disallowed afterwards, it shall cease to operate.

By *sect. 17*, all general rules of the Commissioners must be laid by the Secretary of State before both Houses of Parliament.

By *sect. 18*, before any rule or order can come into operation in any parish or union, a copy must be sent, sealed or stamped with the seal of the Commissioners, to the overseers of such parish, or the guardians of such union, and to the clerk to the justices of the petty sessions for the division in which such parish or union shall be situate, who are required to give publicity to such rules and orders as the Commissioners shall direct, and to allow every owner of property or rate-payer to inspect the same, and to furnish copies or allow copies to be taken at their expense. In case any such overseer, guardian, &c. shall make default in any of these particulars, he is liable to a penalty not exceeding 10*l.*, nor less than 40*s.* Any disallowance or revocation of a rule is to be notified in the same manner.

And by 5 & 6 Vict. c. 57, s. 3, whenever any general rule of the Commissioners shall be in force, they cannot issue any particular rule or order addressed to any single parish or union by which such general rule would be rescinded or suspended, unless with the approval of the Secretary of State.

By 4 & 5 Will. 4, c. 76, s. 20, no rule, order, or regulation of the Commissioners, except orders made in answer to statements, and reports made by overseers or guardians, shall be in force, until fourteen days after a copy shall have been sent pursuant to the above directions. And no order or regulation of any assistant commissioner shall be in force, until the same shall have been adopted by the Commissioners, and

(a) And see *Addenda*, post, p. 966.

(b) *R. v. Poor Law Commissioners*, 6 Ad. & E. 54.

(c) *Reg. v. Guardians of Braintree Union*, 1 Q. B. Rep. 130; 4 P. & D. 593.

sealed or stamped with their seal; and thereupon every such order or regulation shall be considered as made by the Commissioners.

Certiorari.—By *sect. 105*, any rule, order, or regulation of the Commissioners may be removed by *certiorari* into the Court of Queen's Bench, but, until decided illegal by that Court, shall continue in full force. By *sect. 106*, no application can be made for a *certiorari*, except to the full Court, nor unless notice in writing shall have been left at the office of the Commissioners ten days previous to the application, setting forth the name and description of the party applying for the writ, together with a statement of the grounds thereof.

By *sect. 107*, the party applying for the writ must also enter into a recognizance, with sufficient sureties, before a judge of the Queen's Bench, or a justice of the peace in the county in which such person shall reside, in 50*l.*, to prosecute the *certiorari* with effect, and in default thereof, or in the event of the rule being deemed legal, to pay to the Commissioners their full costs; which, in that event, the Commissioners are entitled to within ten days after demand, and, upon oath made of such demand and refusal, may recover the same in the same manner as any penalties are recoverable under the act.

By *sect. 108*, if the rule is quashed, the Commissioners must notify the judgment of the Court to all unions and parishes to which the rule shall have been directed, and the same shall, from the time of receiving such notice, be deemed to be null and void, except as to any existing contracts, and except also that no person is to be answerable for any act done by him before the receipt of such notice.

Attendance at Vestries.—By *sect. 21*, the Commissioners and assistant commissioners are entitled to attend at every parochial and other local board and vestry, and take part in the discussions, but not to vote at such board or vestry.

Penalty for Disobedience of Rules.—By *sect. 98*, in case any person shall wilfully neglect or disobey any of the rules, orders, or regulations of the Commissioners or assistant commissioners, or be guilty of any contempt of the Commissioners sitting as a board, he is liable, upon conviction before two justices, for the first offence to a penalty not exceeding 5*l.*; for the second offence, not exceeding 20*l.*, nor less than 5*l.*; and for a third offence, he is guilty of a *misdemeanor*, punishable by a fine of not less than 20*l.*, and imprisonment with or without hard labour.

Recovery of Penalties, and Proceedings.—By *sect. 99*, all penal-

ties under the act, together with costs, are recoverable before two justices, on the oath of one witness, by a distress warrant under the hands of two justices; and in default of distress, the justices may commit the party to the common gaol or house of correction, not exceeding three calendar months. The penalties are to be paid to or for the use of the parish or union where the offence shall have been committed, in aid of the poor rate.

By *sect. 100*, owners of property, rate payers, and inhabitants of any parish or union, are competent *witnesses*.

By *sect. 101*, any Commissioner or assistant commissioner, or any justice, may summon the party complained against to appear before *two justices*, who may hear and determine the complaint.

By *sect. 102*, no *distress* is to be deemed unlawful for want of form, in any proceedings relating thereto.

By *sect. 103*, an *appeal* is given against any conviction in a penalty exceeding 5*l.* to the quarter sessions, within four calendar months after the conviction, upon giving fourteen days' notice in writing to the respondent, and within five days entering into a recognizance with sufficient sureties to try the appeal.

II. OF OVERSEERS.

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1. *Number and Appointment of Overseers.*

By 43 Eliz. c. 3, s. 1, the churchwardens of every *parish*, and four, three, or two substantial householders there, as shall be thought meet, having respect to the proportion and greatness of the same, are to be nominated yearly in Easter week (but now by 54 Geo. 3, c. 91, on the 25th March, or within fourteen days afterwards) under the hand and seal of two or more justices of the peace in the same county, dwelling in or near the same parish or division where the same parish doth lie, to be overseers of the poor.

By 13 & 14 Car. 2, c. 12, s. 21, there shall also be yearly chosen and appointed two or more overseers within every *township* or *vil- lage*, in the manner directed by the 43 Eliz. c. 3, and liable to the same duties and pains and penalties for non-performance thereof.

Under this statute, it has been held that the *township* or *village* may be either parochial or extra-parochial (*d*); but the appointment cannot be for a *precinct*, unless it be a township or vill by reputation (*e*); but a *hamlet* shall be intended to be a vill, for “vill” and “hamlet” are synonymous terms (*f*). And where one of four townships of a parish had immemorially been severed from the rest in the maintenance of its poor, and had its own overseers, it was held that the severance of that township entitled either of the remaining townships to claim an appointment of overseers under the 13 & 14 Car. 2, c. 12, s. 21, although the poor of the three townships were maintained in one workhouse at their joint expense, and all the townships had (with other districts) been incorporated in a poor law union, under the 4 & 5 Will. 4, c. 76, s. 26 (*g*).

Persons resident only for a part of the year in the parish or township should not be appointed by the justices, except in cases of necessity (*h*). And this necessity now no longer exists in the case of parishes; for by 59 Geo. 3, c. 12, s. 6, two justices at a special sessions, upon the nomination and at the request of the inhabitants of any parish in vestry assembled, may appoint any person who is assessed to the relief of the poor thereof, and is a householder resident within two miles of the church or chapel, or if none, then within one mile of the boundary of the parish, to be an overseer, although he is not a householder within the parish. But no such person is compellable to serve the office, unless he consents to the appointment.

2. *Exemptions from the Office.*

The following persons are exempted from serving the office: churchwardens during their continuance in office (*i*), clergymen (*h*), dissenting ministers (*l*), peers (*m*), members of parliament (*n*), aldermen of London (*o*), justices of the peace (*p*), practising barristers and attorneys (*q*), members of the College of Physicians (which exception however extends no further than the city of London, by 32 Hen. 8, c. 40), members of the College of Surgeons so long as they exercise surgery (*r*), apothecaries in practice (*s*), non-commissioned officers

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| (<i>d</i>) <i>R. v. Rufford</i> , 1 Str. 512. | (<i>l</i>) 1 W. & M. c. 18, s. 1; 52 Geo. 3, c. 155. |
| (<i>e</i>) Cro. Car. 92, 394. | (<i>m</i>) 1 Gibs. Cod. 215. |
| (<i>f</i>) <i>R. v. Morris</i> , 4 T. R. 550. | (<i>n</i>) <i>Ibid.</i> |
| (<i>g</i>) <i>Reg. v. Justices of Worcestershire</i> , 12 Ad. & E. 28. | (<i>o</i>) <i>R. v. Abdy</i> , Cro. Car. 525. |
| (<i>h</i>) <i>R. v. Moor</i> , 1 Bott. 9. | (<i>p</i>) <i>R. v. Gayer</i> , 2 Burr. 245. |
| (<i>i</i>) <i>R. v. All Saints, Derby</i> , 13 East, 143. | (<i>q</i>) <i>R. v. Prouse</i> , Cro. Car. 389. |
| (<i>k</i>) <i>Anon.</i> , 1 Bott. 9. | (<i>r</i>) 18 Geo. 2, c. 15, s. 10. |
| | (<i>s</i>) 6 & 7 Will. 3, c. 4, ss. 2, 3. |

and privates of militia (*t*), captains in the guards (*u*), yeoman of the King's body guard (*x*), officers in the army, navy, or marines, and officers of the customs, and all other revenue officers (*y*).

3. *The Mode of Appointment.*

Two justices ought to issue a precept to the high constable, directing him to require the petty constables that they enjoin all the overseers within their respective constablewicks to deliver in a list of qualified inhabitants within a certain time. The justices then, having made a selection, must put the appointment in writing under their hands and seals, and sign it in the presence of each other (*z*).

The appointment is not void, although not made within the time limited by the statute (*a*); and an appointment once made cannot afterwards be changed or superseded, except on appeal to the quarter sessions (*b*).

Where the Parish partly within a corporate Jurisdiction.—Where the parish is partly within a corporate jurisdiction, and partly without, the appointment should be made by four justices, two for the part within the county at large, and two for the part within the corporate jurisdiction (*c*).

4. *Penalty for not appointing Overseers.*

By 43 Eliz. c. 2, s. 10, if in any place there shall be no such nomination of overseers as is before appointed, every justice of the division shall forfeit 5*l.* to the poor of such place, to be levied by one of the churchwardens and overseers by distress, by warrant from the sessions.

A writ of *mandamus* may also be applied for to the Court of Queen's Bench, to compel the justices to make an appointment (*d*).

5. *Where an Overseer dies, &c.*

By 17 Geo. 2, c. 38, s. 3, if any overseer shall die, or remove from the place for which he was appointed, or become insolvent, before the expiration of his office, on oath thereof made, two justices may appoint another in his stead, who shall continue in office until new overseers are appointed. And if any overseer shall remove, he must before such removal deliver over to some churchwarden, or

(*t*) 42 Geo. 3, c. 90, s. 174.

(*u*) 1 Bott, 9, note.

(*z*) *R. v. Great Marlow*, 2 East, 245.

(*y*) *R. v. Warner*, 8 T. R. 375.

(*x*) *R. v. Great Marlow*, 2 East, 244.

(*a*) *R. v. Sparrow*, 2 Str. 1123.

(*b*) 2 East, 244.

(*c*) 43 Eliz. c. 2, s. 9.

(*d*) *R. v. Rufford*, 8 Mod. 39.

other overseer, his accounts verified on oath before a justice, with all rates, monies, and other things concerning his office; under the like penalty, as is imposed for refusing to do the same after the expiration of his office.

6. *Of the Assistant Overseer.*

By 59 Geo. 3, c. 12, s. 7, the inhabitants of any parish in vestry assembled may nominate any discreet person to be assistant overseer, and determine and specify the duties to be performed by him, and fix such yearly salary for him as they shall think fit; and two justices may, by warrant under their hands and seals, appoint such person to be an assistant overseer. The salary to be paid out of the poor rate. Every person so appointed is empowered to execute all such of the duties of an overseer of the poor as shall in the warrant be expressed, in like manner, and as fully as the same may be executed by any ordinary overseer; and he shall continue to hold the office until he shall resign it, or until his appointment shall be revoked by another vestry. The parish may take a bond from him, with sureties, for the faithful execution of the office. And by *sect. 35*, the same provision is extended to all townships, vills, and places having separate overseers, and maintaining their poor separately.

By 4 & 5 Will. 4, c. 76, s. 48, the assistant overseers, as well as other paid parochial officers, are removable by the Poor Law Commissioners, for incompetency or neglect.

7. *Of the general Duties of Overseers (e).*

By *Rule 20* of the Poor Law Commissioners under the 4 & 5 Will. 4, c. 76, for the guidance and government of the board of guardians, the duties of the *churchwardens* and *overseers*, as far as they relate to the poor of every parish or union, are thus defined.

1. To make, assess, and collect all rates which shall be necessary for the relief of the poor, and for defraying all other charges and expenses legally chargeable on the same, and to satisfy all such charges and expenses; and at the end of each quarter to submit to the auditor of the union a distinct account and balance sheet, exhibiting the amount so collected and the amount so disbursed.

2. To pay over from the rates so collected all such sums, as by the authority of the board of guardians expressed to them in writing, ac-

(e) It is understood that the Poor Law Commissioners are about making some amended rules as to the duties of overseers. If they should be promulgated before the publication of this work, they will be given in the Appendix.

ording to a form prescribed, signed by the presiding chairman of any meeting and two other guardians present, and countersigned by the clerk, shall be directed to be provided from the poor rates of their respective parishes for the necessary relief of the poor, and for defraying such proportion of the general expenses of the union, as shall be lawfully chargeable on such parishes respectively, and to take a receipt for the monies so paid ; and to produce such authority and such receipt as their vouchers for those payments before the auditor of the union, in passing their quarterly accounts.

3. To provide a rate book, according to a given form, and punctually to make the entries therein of the several matters mentioned in the headings of the several columns of such form ; and every rate for the relief of the poor, and the allowance of such rate, must be recorded in such rate book.

4. If, in any case of sudden and urgent necessity, he deems it right that temporary relief to any pauper in articles of necessity should be given out of the workhouse, he is to cause the same to be given, if possible, by the relieving officer, but if he gives relief himself, he must forthwith report the same in writing to the relieving officer.

5. If he shall be ordered, under the 54th *sect.* of the Poor Law Amendment Act, to give temporary relief in articles of absolute necessity, but not in money, to any poor person not settled nor usually residing in the parish, and shall give such temporary relief accordingly, he must forthwith report the same in writing to the relieving officer.

6. If he shall receive an order directing relief to be given to any person (duly certified under the hand and seal of one of the signing justices, to be of his own knowledge wholly unable to work) without requiring that such person shall reside in any workhouse, he must forthwith transmit the same to the relieving officer, to be laid before the board of guardians at their next meeting, that they may be enabled without delay to give to the relieving officer the necessary directions.

7. To give their aid in all things in carrying the orders of the guardians into effect, and to observe all lawful orders of the board of guardians, and all rules issued by the Poor Law Commissioners.

8. *Penalties on Overseers for Neglect of Duty.*

Omission to meet once a Month.—By 43 Eliz. c. 2, s. 2, the churchwardens and overseers, or such of them as shall not be let by sickness or other just excuse to be allowed by two justices, shall

meet together at the least once in every month in the church of the parish upon the Sunday in the afternoon after divine service, there to consider of some good course to be taken for the relief and employment of the poor, under the penalty of 20s. for every default, to be levied by one of the churchwardens or overseers, by warrant of two justices, by distress, for want of which commitment to the common gaol until the penalty be paid.

This penalty, however, cannot be inflicted on an overseer of an *extra-parochial* place because there is no church to meet in (*p*); nor on any overseer who has had no notice of his appointment (*q*).

Neglecting requisition of 17 Geo. 2, c. 38.]—By 17 Geo. 2, c. 38 (relating to the accounts of overseers), it is enacted by *sect. 14*, that if any churchwarden, overseer, or parish officer neglect to obey any of the directions of that act, where no penalty is before provided, or shall act contrary thereto, on oath made within two calendar months after the offence before two justices, he shall forfeit for the use of the poor not exceeding 5*l.*, nor less than 20*s.*, to be levied by distress.

Neglect of Duty, or disobedience of Order of Justices.]—By 33 Geo. 3, c. 55, s. 1, two justices at any special or petty sessions, upon complaint on oath of any neglect of duty, or disobedience of any lawful warrant or order of any justice, by any overseer or other parish officer (such person having been duly summoned to appear and answer such charge), may impose, upon conviction, any reasonable fine, not exceeding 40*s.*, to be levied by distress, and to be applied to the use of the poor. In default of distress, commitment to the house of correction not exceeding ten days.

Appeal.]—An appeal is given by each of the above statutes to any party who thinks himself aggrieved.

Disobeying Orders of Justices or Guardians.]—By 4 & 5 Will. 4, c. 76, s. 95, if any overseer, assistant overseer, master of a work-house, or other officer of any parish or union, shall wilfully disobey the legal and reasonable orders of the justices and guardians of the poor of any parish or union, in carrying the rules, orders and regulations of the Poor Law Commissioners or Assistant Commissioners, or the provision of that act, into execution, every such offender, upon conviction before two justices, is liable to a penalty not exceeding 5*l.*

(*p*) *R. v. Rufford*, 8 Mod. 40.

(*q*) *R. v. Harman*, 1 Bott, 376.

Disobeying Orders for Relief.—By *sect. 54*, if an overseer disobey the order of a justice to give temporary relief to a pauper in a case of sudden and urgent necessity, he is also liable, on conviction before two justices, to a penalty not exceeding 5*l.*, and also incurs the same penalty for disobeying a justice's order for medical relief, where any case of sudden and dangerous illness may require it.

Embezzling Monies, &c.—By *sect. 97*, if any overseer, &c. or other paid officer, or any other person employed under the authority of the guardians, shall purloin, embezzle, or wilfully waste, or misapply any of the monies, goods, or chattels belonging to any parish or union, he is liable (in addition to any other legal punishment) to a penalty not exceeding 20*l.*, and also treble the value of the property, and be incapacitated from serving any office under the act.

Recovery of Penalties and other Proceedings.—By *sect. 99*, the above penalties may be recovered by distress, on conviction before two justices, on the oath of one witness; and in default of distress, the offender may be committed to the common gaol or house of correction not exceeding three calendar months. The penalties are to be applied to the use of the parish or union where the offence is committed, in aid of the poor rate.

By *sect. 100*, owners of property, rate payers, and inhabitants of parishes are competent witnesses. By *sect. 101*, a summons must be issued before any conviction, which (by *sect. 90*) may be left at the usual or last known place of abode of the party. By *sect. 102*, no distress shall be unlawful for want of form. And by *sect. 103*, an appeal is given to the quarter sessions within four calendar months after the cause of complaint.

Supplying Goods for their own Profit.—By 55 Geo. 3, c. 137, s. 6, overseers are also prohibited from supplying for their own profit any goods or provisions for the use of the poor, under a penalty of 100*l.*, recoverable by action at law.

Misusing the Poor.—An overseer also is liable to an indictment for a misdemeanor, if he refuses to provide necessary meat and sustenance to a poor person in distress (*r*); or for misusing the poor in any other way (*s*).

Not paying over Contribution of Parish to Union.—By 2 & 3 Vict. c. 84, s. 1, where any contribution by overseers, or other offi-

(*r*) *R. v. Booth*, Russ. & Ry. 47, note.

(*s*) *R. v. Wetherill*, Cald. 432.

cers of any parish, of monies required by the board of guardians for such parish, or for any union which shall include such parish, shall be in arrear, any two justices acting within the district wherein such parish shall be situate, on application under the hand of the chairman of such board, may summon the overseers to show cause at a special sessions to be summoned for the purpose, why such contribution has not been paid; and after hearing the complaint, the justices may issue a distress warrant for the amount of such contribution, together with costs, to be levied from the overseers or other officers, in like manner as poor rates may be levied and recovered, and the amount, when levied, to be paid to the board.

9. *Recovery by Overseers of Parish Houses or Lands.*

Mode of Proceeding.—By 59 Geo. 3, c. 12, s. 24, if any person, who shall have been permitted to occupy any parish or town house, or any other tenement or dwelling belonging to or provided by at the charge of any parish, for the habitation of the poor thereof, or who shall have unlawfully intruded himself into any such house, or into any house, tenement, or hereditament belonging to such parish, shall refuse or neglect to quit the same, and deliver up the possession thereof to the churchwardens and overseers, within one month after notice and demand in writing for that purpose signed by them, or the major part of them, shall have been delivered to the person in possession, or in his absence affixed on some notorious part of the premises, *two justices*, upon complaint by one of the churchwardens and overseers, may issue their summons to the person against whom the complaint is made, to appear before them, which summons may be either delivered to the party, or in his absence be affixed on the premises, seven days before the return thereof. Upon the appearance of the defendant, or upon proof on oath that the summons hath been so delivered or affixed, the justices may proceed to hear and determine the matter of the complaint; and if they shall find the same to be true, then they may, by warrant under their hands and seals, cause possession of the premises in question to be delivered to the churchwardens and overseers.

By *sect. 25*, if any person, to whom any land appropriated, purchased, or taken under the authority of that act for the employment of the poor of any parish, or to whom any other lands belonging to the parish, shall have been let for his or her own occupation, shall refuse to deliver up the possession at the expiration of his term; or if any person shall unlawfully enter upon, or take or hold possession

of any such land, or any other land belonging to the parish, any of the churchwardens and overseers, after such notice as above mentioned, may exhibit a complaint before two justices, who may adjudge possession to be delivered to the churchwardens and overseers in manner before mentioned.

10. *Of Overseers' Accounts.*

By the 43 Eliz. c. 2, s. 2, the accounts of the overseers, on their going out of office, were directed to be submitted to two justices; but there are more comprehensive provisions on this subject by subsequent statutes.

When to make up their Accounts.—By 17 Geo. 2, c. 38, s. 1, the churchwardens and overseers are required every year, within fourteen days after other overseers are appointed to succeed them, to deliver to such succeeding overseers a just, true and perfect account in writing, fairly entered in a book to be kept for that purpose, and signed by them, of all monies received by them, or rated and assessed and not received, and also of all goods and materials that shall be in their hands, or in the hands of any of the poor, in order to be wrought, and of all monies paid by them, and of all other things concerning their office; and to pay and deliver over all monies and other things in their hands unto the succeeding overseers; which account must be verified on oath before one justice, who is to sign and attest the caption of the same at the foot of the account, without fee or reward.

And by *sect. 2*, in case any of them shall refuse or neglect to make and yield up such account so verified, within the time before limited, or to pay and deliver over such monies, &c., two justices may commit him or them to the common gaol, until they shall give such account, or pay and yield such monies, &c.

Penalty for not accounting, &c.—By 50 Geo. 3, c. 49, s. 1, every such account shall be submitted by the churchwardens and overseers to two justices dwelling in or near the parish to which such account shall relate, at a special sessions to be holden for that purpose within the fourteen days appointed by the former act. The justices may examine into the matter of such account, on oath, and disallow and strike out all such charges and payments as they shall deem to be unfounded, and reduce such as they shall deem to be exorbitant, specifying upon or at the foot of the account every such charge or payment and its amount, and the cause for which the same is disallowed

or reduced; and the justices are required to signify their allowance and approbation of the account, in manner directed by the 17 Geo. 2, c. 38. In case the churchwardens and overseers shall refuse or neglect to make and yield up or to submit to such account, or to verify the same by oath as aforesaid, or to deliver over to their successors within ten days from the signing and attesting such accounts, any goods or other things which shall appear to be remaining in the hands of the churchwardens or overseers, the justices may commit them to the common gaol, until they shall have made and yielded such account and verified the same, or shall have delivered over such goods and things. And in case they shall refuse or neglect to pay to their successors, within fourteen days from the signing and attesting such account, any sum which shall be found due from them, the subsequent churchwardens and overseers, by warrant from two justices, may levy the money by distress, and in default of such distress, the justices may commit the offender to the common gaol, until payment of such money. But by *sect. 6*, this provision is not to affect parish officers exempted under local acts from rendering such accounts.

The provision contained in this last statute is not a substitution in lieu of the provision in the 17 Geo. 2, c. 38, but is cumulative; and therefore the overseers are still compellable to deliver in their accounts to the succeeding overseers within the fourteen days, as well as to submit them to the two justices (*t*). And they are bound also to verify and deliver over the sort of account required by the very terms of the statute, and not merely a summary or balance sheet of the monies received and expended (*u*). It is discretionary with the justices to commit an overseer for refusing to account, and they are not compellable to do so (*x*); but if they refuse to swear an overseer to the truth of his account, they may be compelled to do so by *mandamus* (*y*). The justices cannot commit a man for not accounting, before the time allowed for rendering an account has elapsed (*z*); nor if he have already accounted before any other magistrate similarly authorized (*a*). Indeed, when the accounts have been laid before one set of magistrates, no other justices have any authority to meddle with them, unless by the directions of the Court of Queen's

(*t*) *Lester's case*, 16 East, 374.

(*y*) *R. v. Middesex Justices*, 1 Wils.

(*u*) *R. v. Worcestershire Justices*, 3 125.

Dow. & R. 299.

(*z*) *R. v. Tucker*, 5 M. & S. 508.

(*a*) *R. v. Norfolk Justices*, 4 B. & Ad. 238.

(*a*) 2 Nol. 347.

Bench (*b*). Nor can the justice's authority in allowing the accounts be delegated to any other (*c*). In one case it was resolved, that justices might fine overseers, as well as imprison them, for refusing to account (*d*). Where a parish extends into more counties than one, or lies partly within and partly without the liberties of any corporate place, the officers of such a parish are directed by the 43 Eliz. c. 2, s. 9, to make one account before the head officers of the place corporate, and another account before the justices of the county.

If the justices commit an overseer for refusing to account, the commitment should state the party to be *overseer*; and therefore if a churchwarden be committed for this cause, although the office of overseer is annexed to the office of churchwarden, yet the commitment will be bad, if it be not stated that he is *overseer*; for the justices have no power over him as a *churchwarden* (*e*). The warrant of commitment should conclude "until he shall have given such account," and not "until he shall be duly discharged according to law" (*f*); but where a warrant previously alleged that the party was committed until he should have made a fair and true account, it was held that the conclusion directing the gaoler to keep him "until he should be discharged by due course of law," did not vitiate the warrant; for that the warrant was to be read, as if the magistrate had in the conclusion recited over again the adjudication, and that when the party had accounted and paid over the money, he would be entitled to be discharged by due course of law (*g*).

Required to account Quarterly.—But, besides the yearly account thus required to be rendered by overseers, they must now, by 4 & 5 Will. 4, c. 76, s. 47, render an account once every quarter to the guardians, auditors, or other persons as may by any statute, or the rules of the Poor Law Commissioners, be appointed to audit such accounts, or in case no such persons are appointed, then to the justices at their petty sessions; and, if required, they must verify on oath the truth of the account, or subscribe a declaration to the truth thereof. And all balances due may be recovered in the same manner as any penalties and forfeitures are recoverable by the act, that is, by distress, on conviction before two justices, on the oath of one witness; and in default of distress, then the party may be committed

(*b*) *R. v. Townsend*, 1 Bott. 305.

(*c*) *R. v. Turner*, 16 Vin. Abr. 415.

(*d*) *R. v. Sedgewold*, 1 Bott. 300.

(*e*) *R. v. Peake*, 1 Keb. 574.

(*f*) *Mayor of Northampton's case*, Carth. 152.

(*g*) *Goff's case*, 3 M. & S. 203.

to the common gaol or house of correction not exceeding three calendar months. And see *ante*, *Penalty for not accounting.*

What may be charged in Accounts.—By 4 & 5 Will. 4, c. 76, s. 89, all payments, charges and allowances made by any overseer or guardian, and charged upon the rates, contrary to that act, or at variance with any rule of the Poor Law Commissioners, are declared illegal, and every justice is required to disallow such payments.

The overseers, with the exception of the assistant overseer, are not entitled to any remuneration for their trouble in executing the duties of their office (*h*); and they are only entitled to charge in their accounts what they have spent for the parish, under the directions of any statute or the orders of the Poor Law Commissioners, or in obedience to the orders of justices or any legal process. Thus, they may charge whatever they have expended in the relief of paupers, (where it was their duty to relieve,) in providing work for the children of indigent parents, and for persons having no means of gaining a livelihood; for the costs of orders of maintenance or removal, or of an appeal (*i*), though decided against them; but not for the expenses of a lawsuit (*h*) incurred by them, without consulting the vestry, unless the emergency of the occasion allowed no time for that precaution; nor for the expences of an indictment for assaulting a constable in the execution of his duty, although the prosecution was directed by a magistrate (*l*).

When Overseers may be reimbursed by their Successors.—By 17 Geo. 2, c. 38, s. 11, where the overseers during their continuance in office have been unable to get in any rate, from the refusal or the neglect of the party rated, but which is afterwards recovered by the succeeding overseers, the latter may reimburse the advances of their predecessors, to the extent of the arrears so got in. And by 41 Geo. 3, c. 23, s. 9, the succeeding overseers may reimburse their predecessors all sums advanced by them during a time when no rate was made, or where an appeal against the rate was pending.

Paying over the Balance.—The justices may be compelled by *mandamus* to grant a warrant for levying the balance of the last overseers' account, although the vestry may have ordered them to retain it for a particular purpose; for it is not in the power of the

(*h*) *R. v. Glyde*, 2 M. & S. 323, n.;
R. v. Gwyer, 2 A. & E. 216.

(*i*) *R. v. Esser*, 4 T. R. 595.

(*k*) *R. v. Micklefield*, Cald. 509.

(*l*) *R. v. Bird*, 2 B. & Ald. 522; *R. v. Seville*, 5 B. & Ald. 180.

vestry to dispense with the directions of the statute (*m*). And the justices must issue their warrant to levy the balance, upon the application of *one* of the succeeding overseers, although the rest refuse to concur in the application (*n*). Two justices out of sessions may enforce the payment of the balance, after an appeal to the sessions, where the sessions made no order for payment (*o*).

Delivering up Books.—All the parish books must be delivered up by the overseers quitting office to their successors, and a *mandamus* will lie to compel them to do so (*p*). And the justices have power, under the statutes of 17 Geo. 2, c. 38 and 50 Geo. 3, c. 49, to commit them for refusing to do so. But where two justices convicted an overseer for not delivering over *one particular book*, specifying its use, and then committed him “until he should have yielded up *all and every the books* concerning his said office of overseer belonging to the parish,” the commitment was not only held void, but the justices were also held liable to an action for false imprisonment; for such a commitment subjected the party to the risk of an imprisonment for an indefinite period, inasmuch as the gaoler had no adequate means of judging whether his prisoner would have, in fact, complied with the terms of such condition; and the commitment ought not to have been in respect of a supposed contumacy to any greater extent, than that in which obedience had been previously required of him (*q*).

Appeal against the Allowance of the Accounts.—By 17 Geo. 2, c. 38, s. 4, if any person shall have any material objection to the accounts, he may, giving reasonable notice to the churchwardens and overseers, appeal to the next sessions.

The accounts must appear to have been allowed by the justices, before the party can appeal (*r*). One overseer can appeal against his co-overseer's accounts (*s*), and a party has a right to appeal against all the accounts of the overseers, although he has not been rated in every rate.

As to what is reasonable notice, a clear week's notice will satisfy the statute, unless by the practice of the particular sessions a longer notice is required, or there are peculiar circumstances in the case which may induce the sessions to adjourn the appeal to the following

(*m*) *R. v. Justices of Somersetshire*, 2 Str. 992.

(*n*) *R. v. Pascoe*, 2 M. & S. 343.

(*o*) *R. v. Carter*, 4 T. R. 246.

(*p*) *R. v. Clapham*, 1 Wils. 305.

(*q*) *Grooms v. Forrester*, 5 M. & S. 314.

(*r*) *R. v. Bartlett*, 2 Str. 983.

(*s*) *R. v. Gloucestershire Justices*, 1 B. & Adol. 1.

sessions (*t*). And where overseers' accounts were not allowed till the last day that an effectual notice of appeal could have been given to the next sessions, and it did not appear when the party objecting had notice of such allowance, it was held that a notice of appeal to the next subsequent sessions, for which an effectual notice of appeal could be given, was good (*u*).

By 41 Geo. 3, c. 23, s. 4, the notice must be in writing, and specify the causes or grounds of appeal; therefore a notice merely stating that the appellant objected to certain specified payments, alleged in the accounts to have been made to persons specified by name in the notice, without stating the particular cause or ground upon which any one is objected to, is insufficient (*x*).

It is not necessary, however, to state in the notice, that the appellant is a party aggrieved, or a parishioner; and the notice will be sufficient if given to the overseers, omitting the churchwardens (*y*).

By 50 Geo. 3, c. 49, s. 2, a right of appeal is also given to the overseers, if they feel themselves aggrieved by the disallowance or reduction of any charges or payments in their accounts, to the next sessions, after the tenth day from the making of the order of the justices, the overseers having first paid or delivered over to their successors all monies, &c., admitted to be due or remaining in their hands, and entering into a recognizance with two sureties in double the sum in dispute.

1. *Warrant for returning Lists of Overseers.*

County of —, } To —, gentleman, high constable of the hundred of —
to wit. } within the said county.

We, two of her majesty's justices of the peace for the said county of —, one whereof is of the *quorum*, do hereby require you forthwith, upon your receipt hereof, to issue your warrants to all the petty constables within your said hundred, in the form, or to the effect, according as upon this our warrant is indorsed. Given under our hands and seals the — day of —.

2. *Warrant of the High Constable to the Petty Constables.*

Staffordshire, }
Hundred of —. } To the constable of —.

By virtue of a precept from two of her Majesty's justices of the peace in and for the said county of Stafford (one whereof is of the *quorum*) to me directed, you are hereby required, immediately upon sight hereof, to give — notice to all and every the overseers of the poor within your constablewick, that they make out a list in writing of a competent number of substantial householders within their respective districts, and

(*t*) 2 Nof. P. L. 525.

(*u*) R. v. *Dorsetshire Justices*, 15 East,

200.

(*x*) R. v. *Sheard*, 2 B. & C. 856.

(*y*) R. v. *Norfolk Justices*, 2 B. & Adol. 944.

deliver in the same to the said justices, and others her said Majesty's justices of the peace for the said county, at a special sessions to be holden at —, in —, in the said county, on — the — day of — (z), at the hour of — in the forenoon of the same day; to the end that out of the said list the said justices may appoint other overseers of the poor for the year next ensuing. And you are hereby also required to give notice to all justices of the peace for the said county residing in your constableness, at the time and place appointed for holding the said special sessions. And be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand the — day of — in the year of our Lord —.

J. W., High Constable.

3. *Form of an Appointment of Overseers.*

Staffordshire, } We, — and — esquires, two of her Majesty's justices of the
to wit. } peace in and for the said county of Stafford, one of whom is of the
quorum, do hereby nominate and appoint A. B., Z. Y., C. D., and X. W., being substantial householders of and in the parish [or "township"] of E. in the said county [or, if any of them be appointed under the statute 59 Geo. 3, c. 12, s. 6, then say, "A. B., Z. Y., C. D., being substantial householders of and in the parish [or 'township'] of E., in the said county, and X. W. a householder resident in the parish of F. in the said county, who has consented to this appointment,"] to be overseers of the poor in the said parish [or "township"] of E., together with the churchwardens thereof for the present year, according to the directions of the statute [or if a township, "the statutes"] in that case made and provided. Given under our hands and seals this — day of — (a).

E. M. (L. s.)

G. C. (L. s.)

4. *Form of the Appointment of an Assistant Overseer by two Justices.*

County of —, } Whereas the inhabitants of the parish of — in the county of
to wit. } —, in vestry assembled, in the said parish, on the — day of — last past, did nominate and elect —, of —, to be an assistant overseer of the poor of the said parish, and did determine and specify that he should execute and perform all the duties of the office of an overseer of the poor of the said parish, and did fix the yearly sum of £— as and for the yearly salary of the said — for the execution of his said office; Now we, two of her Majesty's justices of the peace in and for the said county, in pursuance of the statute in such case made and provided, do hereby appoint the said — to be an assistant overseer of the poor of the said parish; and we do hereby authorise and empower him to execute and perform the said duties, until he shall resign his said office, or until his appointment shall be revoked by the inhabitants of the said parish in vestry assembled, and to receive the said salary so as aforesaid fixed by the said inhabitants in their said vestry.

Given under our hands and seals, this — day of —, in the year of our Lord 1842.

A. B. (L. s.)

C. D. (L. s.)

(z) By 54 Geo. 3, c. 91, this must be within fourteen days after the 25th of March.

(a) This appointment must be signed within fourteen days after the 25th of March.

5. *Information of an Overseer of the Poor against a person for refusing to quit Possession within one Month after Notice and Demand.*

County of —, } The information and complaint of O. P., one of the overseers of
to wit. } the poor of the parish of — in the said county, made on oath
before me, J. P., esquire, one [or “J. P. and K. P., esquires, two”] of her Majesty’s
justices of the peace in and for the said county, the — day of — in the year of
our Lord 1842; who says that A. O., a poor person residing in the parish of — in
the said county, having been permitted to occupy [or “having unlawfully intruded
himself into”] a parish [or “town”] house [or “tenement or dwelling”] belonging to
[or “provided by,” or “at the charge of”] the said parish of —, situated at —
in the said parish [or “in the parish of — in the county of —,” *as the case may
be,*] has refused [or “neglected”] to quit the same, and deliver up the possession
thereof to the churchwardens and overseers of the poor of the said parish of —,
within one month after notice and demand in writing for that purpose signed by the
said [or “major part of the”] churchwardens and overseers of the poor, and delivered
to him personally: [or “in his absence affixed on the door,” or some other “notorious
part of the said premises:”] The said complainant therefore prays such redress in the
premises as to law does appertain.

O. P., Overseer of the Poor.

Before me [or “us.”]

6. *Summons thereupon.*

The summons will be in the common form, reciting the information at length. See
post, title *Summons*.

7. *Warrant thereon, to cause Possession to be given.*

County of { To the chief constable of the hundred of —; to the petty constables
— of the parish of —, in the said hundred and county, and to each and
every of them.

Whereas O. P., one of the overseers of the poor of the parish of — in the said
county, did, on the — day of — last, prefer an information and complaint upon
oath before me, J. P., esquire, one of her Majesty’s justices of the peace in and for the
said county, against A. O., a poor person residing in the said parish of —, for that
he, the said A. O., having been permitted to occupy, &c. [*here set out the whole of the
information*]: And whereas upon the appearance of the said A. O. this day before us,
the said J. P., and K. P., esquire, one other of her Majesty’s justices of the peace in
and for the said county, in pursuance of a summons for that purpose, [or “and whereas
on the — day of — last, a summons was duly issued to require the said A. O. to
appear before us this day at — in the said county, to answer unto the said com-
plaint, and it appears to us J. P. and K. P. esquires, two of her Majesty’s justices of
the peace for the said county, upon the oath of A. C., constable of the parish of —
aforesaid, that he the said A. C. did duly deliver the said summons to the said A. O. on
the — day of — instant:” or “that he the said A. C. did use his best endea-
vours to deliver the said summons to the said A. O., and that in the absence of the said
A. O., he the said A. C. did affix, or cause to be affixed the said summons on the door
of the said house [or “premises,” *as the case may be,*] seven days at the least before the
time appointed for hearing the said complaint, but that he the said A. O. has neglected

to appear, according to the said summons:"] we, the said justices, have proceeded to hear and determine the matter of the said complaint, and do find and adjudge the same to be true: we do therefore charge and command you, that you without delay go to and cause possession of the premises in question to be delivered to the churchwardens and overseers of the poor of the said parish of —, or some or one of them, pursuant to, and in compliance with, the directions of an act passed in the fifty-ninth year of the reign of King George the Third, intituled, "An Act to amend the Laws for the Relief of the Poor." Herein fail not. Given under our hands and seals at —, in the said county of —, the — day of — in the year of our Lord 1842.

J. P.
K. P.

8. *Information against an Overseer for refusing to account, &c.*

County of } The information and complaint of A. J., overseer of the poor of the
— } parish of —, in the county of —, made on oath before us, J. P.
and K. P., esquires, two of her Majesty's justices of the peace in and for the said
county, this — day of —, in the year of our Lord 1842, who saith,* that A. O.,
now or late of the parish of — aforesaid, yeoman, was on the 25th day of March in
the year of our Lord 1841, duly appointed one of the overseers of the poor for the said
parish of —; that on the — day of — last past, he the said A. J. and one
B. J., of the said parish of —, yeomen, were duly appointed to succeed the said
A. O. and one M. W., as overseers of the poor of the said parish of —; that by an
act passed in the seventeenth year of the reign of his Majesty King George the Second,
intituled, "An Act for remedying some defects in the Act made in the Forty-third
Year of the Reign of Queen Elizabeth, intituled 'An Act for the Relief of the Poor,'" it
is enacted, that the churchwardens and overseers of the poor shall yearly and every
year, within fourteen days after other overseers shall be nominated and appointed to
succeed them, deliver unto such succeeding overseers, a just, true and perfect account
in writing, fairly entered in a book or books to be kept for that purpose, and signed by
the said churchwardens and overseers thereby directed to account as aforesaid under
their hands, of all sums of money by them received, or rated and assessed and not re-
ceived; and also of all goods, chattels, stock, and materials that shall be in their
hands, or in the hands of any of the poor, in order to be wrought, and of all monies
paid by such churchwardens and overseers so accounting, and of all other things con-
cerning their said office; and shall also pay and deliver over all sums of money, goods,
chattels, and other things as shall be in their hands, unto such succeeding overseers of
the poor; which said account shall be verified by oath, or by the affirmation of persons
called Quakers before one or more of her Majesty's justices of the peace; and further,
that in case such churchwardens and overseers, or any of them, shall refuse or neglect
to make and yield up such account verified as aforesaid, within the time before limited
or appointed, or shall refuse or neglect to pay and deliver over such sum or sums of
money, goods, chattels, and other things in their hands, as by the said act is directed,
in either of the said cases it shall and may be lawful to and for any two or more jus-
tices of the peace to commit him or them to the common gaol, until he or they shall
have given such account, or shall have paid and yielded up such monies, goods, chat-
tels, and other things in their hands as aforesaid. And this complainant further saith,
that the said A. O. hath refused and neglected, within the time so limited as aforesaid,
or at any time since, to make and yield up to his said successors such accounts

verified as aforesaid, and to pay and deliver over to his said successors any sum or sums of money, goods, chattels, or other things as are now in his hands, as one of the late overseers of the said parish ;† and therefore he the said A. J. prays that justice may be done in the premises.

A. J.

Taken before us, J. P.

K. P.

9. *Commitment of an Overseer for refusing and neglecting to account, founded on the foregoing Information.*

County of } To A. B. the constable of the parish of — in the said county, and
— } to the keeper of the common gaol at —, in the said county.

Whereas information and complaint upon oath have been made before us, J. P. and K. P., esquires, two of her Majesty's justices of the peace in and for the said county, by A. J., one of the overseers of the poor of the said parish of —, [*here insert the whole of the foregoing information, from * to †, and then proceed thus.*] And whereas the said A. O., after being duly summoned to answer the said complaint, appeared this day before us the said justices, and having heard the said complaint contained in the said information, has made no defence thereto : And it having been proved before us this day upon oath, in the presence and hearing of the said A. O., that the said A. O. had, within fourteen days after the present overseers for the said parish were nominated and appointed to succeed him the said A. O., the sum of £— in his hands, as such late overseer as aforesaid, which said sum the said A. O. still neglects to pay and deliver over to the said A. J. and B. J., or either of them : These are therefore to charge and command you, the said constable, forthwith to apprehend the said A. O., and him safely to convey to the common gaol of the said county of —, at — in the said county, and there deliver him to the keeper thereof, together with this precept : And we do hereby also command you, the said keeper of the said common gaol, to receive the said A. O. into your custody in the said common gaol, and him there safely keep until he shall have given such account, and shall have paid or yielded up the said sum of £— so proved to be in his hands as aforesaid. Given under our hands and seals at — in the said county of —, the — day of —, in the year of our Lord 1842.

II. OF SELECT VESTRIES, GUARDIANS, AND OTHER PAROCHIAL OFFICERS.

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1. *Select Vestries.*

How constituted.—By the 59 Geo. 3, c. 12, s. 1, the inhabitants of any parish in vestry assembled may establish a *select vestry* for the concerns of the poor, and to that end may nominate and elect so many substantial householders or occupiers within the parish, not exceeding twenty, nor less than five, as shall be thought fit to be members of the select vestry. The rector, vicar, or other minister of the parish, and in his absence the curate (if resident and charged to

the poor rate), and the churchwardens and overseers for the time being, together with the inhabitants who shall be nominated and elected as aforesaid (such inhabitants being first thereto appointed by writing under the hand and seal of a justice of the peace), shall be and constitute a select vestry for the care and management of the concerns of the poor of such parish; and any three of them (two of whom are neither churchwardens nor overseers) shall be a quorum. Vacancies arising from death, removal from the parish, incapacity, or refusal or neglect to serve, are to be filled up in the same manner. Every such select vestry shall continue from the time of its appointment until fourteen days after the next annual appointment of overseers, and may be from year to year renewed. The vestry are to meet once in every fourteen days, or oftener if necessary, in the parish church, or some other convenient place within the parish, and a chairman shall be appointed at every such meeting by the majority of the members present, who in all cases of equality of votes is to have the casting vote.—The power of the select vestry, as to the relief of the poor, will be considered in the fourth division of the subject, when we treat of the relief and ordering of the poor.

Before the passing of this statute, however, a select vestry existed in some parishes, by virtue of ancient custom. There may therefore be two select vestries in a parish, the one elected under the above statute, and the other existing by custom, the first of these performing all those functions which the latter could not discharge (*b*); for a select vestry by ancient custom cannot claim an immemorial right to exercise the power as to compulsory rates, which was first given by the 43 Eliz. c. 2 (*c*). A select vestry existing by ancient custom cannot elect another select vestry under the statute; for the former cannot be considered as “the inhabitants of the parish in vestry assembled,” within the meaning of the statute, but merely certain persons possessing some of the powers of the inhabitants in vestry assembled (*d*).

After the election of the members of the select vestry by the inhabitants in vestry assembled, a magistrate has nothing to do but to appoint the persons already chosen by the inhabitants; and he has no power to omit the names of any that have been thus elected, although he may assign a reasonable cause for such omission (*e*).

By 59 Geo. 3, c. 12, s. 3, minutes are directed to be kept of the

(*b*) *R. v. St. Martin in the Fields*, 3 B. & Adol. 506.
& Adol. 907.

(*d*) *R. v. Woodman*, 4 B. & Ald. 507.

(*c*) *R. v. St. Bartholomew the Great*, 2

(*e*) *R. v. Adams*, 2 Ad. & E. 409.

proceedings of the select vestry, which, together with a report of the accounts and transactions, are to be laid before a general vestry twice in every year in March and October.

By *sect. 4*, the churchwardens and overseers must cause ten days' notice to be given in the usual manner of every vestry holden for the purpose of establishing a select vestry, or electing any member thereof, and for receiving the report of the select vestry.

By *sect. 35*, the provisions relating to parishes are to be applied to townships having separate overseers and maintaining their poor separately, and the powers given to vestries are to extend to the meetings of the inhabitants of any township.

Where a select vestry is appointed, the right of the common law vestry is *de facto* superseded (*f*); and any notice of an unusual meeting of the select vestry must be served upon every select vestryman (*g*).

Appointment of select Vestry under 59 Geo. 3. c. 12.

— } Whereas in and by the statute made and passed in the fifty-ninth year to wit. of the reign of his late Majesty King George the Third, intituled, "An Act to amend the Laws for the Relief of the Poor," it is enacted, that it shall be lawful for the inhabitants of any parish in vestry assembled to establish a select vestry for the concerns of the poor of such parish, and to that end to nominate and elect in any vestry such and so many inhabitant householders or occupiers within such parish, not exceeding the number of twenty, nor less than five, as shall in any such vestry be thought fit to be members of the select vestry (such inhabitants being first thereto appointed by writing under the hand and seal of one of her Majesty's justices of the peace, which appointment he is thereby authorized and required to make); And whereas information is made and given, on this — day of —, in the year of our Lord 1842, unto us J. O. and S. P., esquires, whose hands and seals are hereunto subscribed and set, being two of her Majesty's justices of the peace in and for the said county of —, that the inhabitants of the parish of — in the said county, have nominated and elected in manner aforesaid twenty substantial householders and occupiers within the said parish, whose names are hereinafter mentioned, to be members of a select vestry for the concerns of the poor of the said parish; We, therefore, by virtue and in pursuance of the authority and requisition aforesaid, do hereby appoint the following substantial householders and occupiers, that is to say,

A. B. Minister.

C. D. }
E. F. } Churchwardens.

G. H. }
I. K. } Overseers of the Poor.

L. M.

N. O. &c. [*not exceeding twenty.*]

to be and constitute a select vestry, for the care and management of the concerns of the

(*f*) *Clarke v. King*, 2 Y. & J. 525.

(*g*) *Dobson v. Fussy*, 7 Bing. 305.

poor of the said parish of — in the said county, to continue and be empowered to act therein from the time of this appointment until fourteen days after the next annual appointment of overseers of the poor of the said parish shall take place. Given under our hands and seals at — in the said county, the day and year above-written.

J. C. (L.S.)

S. P. (L.S.)

2. *Of Guardians.*—And see *post*, *Unions of Parishes.*

How originally appointed.]—By 22 Geo. 3, c. 83, parishes were allowed to elect *guardians*, for the purpose of governing the workhouse, and administering the relief to the poor; and different parishes might unite for the purpose of maintaining their poor, and have a common workhouse; in which case one guardian was appointed for each parish, and all together had the exclusive management of the poor; the duties of the overseers being confined to the making and collecting of the rate for each parish, which they were required to pay over to the treasurer of the union in such proportions as they were bound to contribute to the general expenses.

And by the 59 Geo. 3, c. 12, parishes were enabled to elect select vestries for the management of the poor, and also (as we have already seen) to appoint assistant overseers.

But now by the 4 & 5 Will. 4, c. 76, s. 21, all the powers and authorities given by the above acts are to be exercised under the control, and subject to the rules, orders, and regulations of the Poor Law Commissioners; and, by *sects.* 26 and 37, parishes can be united only by their orders.

How appointed under the new Poor Law.]—By *sect.* 38, where any parish shall be united by order of the Commissioners, a board of guardians for the union shall be elected by the rate payers and the owners of property in the parishes forming such union. The Commissioners are to determine the number and prescribe the duties of the guardians for the union, and to fix a qualification, which is to consist in being rated to the poor rate of some parish in the union, but not to require a qualification exceeding the annual rental of 40*l.* One or more guardians are to be elected for each parish included in the union, and they are to continue in office until the 25th March next following their appointment, or until others are appointed in their stead. On the 25th March, or if that day shall fall on a Sunday or Good Friday, then on the day next following, or within fourteen days after the 25th March, the guardians go out of office, and others for the ensuing year are to be chosen. In the event of any vacancy occurring between the periods of the annual election, or if

the full number of guardians shall not be duly elected, the other or remaining members of the board shall continue to act until the next election, as if no such vacancy had occurred, and as if the number of the board were complete. Every justice of the peace residing in any such parish, and acting for the county, riding, or division (*h*), in which the same may be situated, shall be an *ex officio* guardian of the union. No guardian has power to act, except in certain cases, but as a member and at a meeting of the board, and no act of any meeting is valid, unless three members are present and concur. Any guardian may be re-elected for the following year, and may be elected, although chosen for any other parish.

By *sect. 39*, if the Commissioners direct that the administration of the poor laws for any single parish shall be governed by a board of guardians, they are to be elected and constituted as in the preceding section.

By the 5 & 6 Will. 4, c. 69, s. 7, the guardians thus appointed are created a corporation, to be styled "*The Guardians of the Poor of — Union (or of the Parish of —) in the County of —.*"

Mode of Election.]—By *sect. 40*, at the election of guardians, the votes are to be taken in writing, and the owner, as well as the rate payer of any property, is entitled to vote; the owner having the same number and proportion of votes, as is provided for inhabitants and other persons by the 58 Geo. 3, c. 69, and 59 Geo. 3, c. 85, with respect to the manner of voting in parish vestries. The rate payers under 200*l.* are to have each a single vote, and those rated at or above that sum and under 400*l.* to have two votes, and those rated at 400*l.* or more, to have each three votes. Where the owner of any property shall be the *bonâ fide* occupier, he is entitled to vote, as well in respect of his occupation, as of his being such owner; and any owner may, by writing under his hand, appoint any person to vote as his proxy; but he is not entitled to vote, unless he shall previously to the day of voting have given a statement in writing to the overseers of his name and address, and the description of the property in the parish as owner whereof he claims to vote, and if voting by proxy, then the original or an attested copy of the writing appointing the proxy. No person shall be entitled to vote, unless he shall have been rated to the poor rate for the whole year preceding, and shall have paid all parochial rates for one whole year, as well as those due at

(*h*) These words, it seems, will not apply to justices of a borough town, which is not a county of itself. *Evans v. Stevens*, 4 T. R. 224, 459.

the time of voting, except such as shall have become due within the six months immediately preceding. In case of any property belonging to a corporation or joint stock company, any one of their officers may vote, as if he were the owner, provided his name be properly entered in the books of the parish.

By *sect. 41*, all elections of guardians, visitors and other officers under the 22 Geo. 3, c. 83, or any local act, are to be according to the directions of the 4 & 5 Will. 4, c. 76. The Commissioners may, with the consent of the majority of the owners of property and rate payers, alter the period for which the guardians are to serve, and make any alterations in the number, mode of appointment, or removal of the guardians.

The Poor Law Commissioners have, in pursuance of the authority vested in them by the above statute, by an order dated the 30th January, 1841, made various rules to be observed by the clerk to the board of guardians, as well as by the overseers and inhabitants entitled to vote, in regard to the mode of conducting the election of the guardians. The clerk is to attend at the board room of the union on the 25th March, and on as many succeeding days as may be necessary, and ascertain the validity of the votes, by an examination of the rate books and the registers of owners and proxies, and by examining such persons as he may see fit; and he is to cast up and ascertain the number of valid votes for each candidate; and those candidates, who have the greatest number of votes, are to be certified by the clerk under his hand as the elected guardians; and he is forthwith to give them notice of their being so elected.

Their Power and Duties.]—The Poor Law Commissioners have issued the following orders for the guidance and government of boards of guardians (*i*).

1. The ordering of all relief to the poor of any union, and the building, hiring, and providing of any workhouse, and the altering, improving, or enlarging the same, or any other existing workhouse, and the regulation and management thereof, and the hiring or purchase of land for such workhouse, or for the employment of paupers therein, shall belong exclusively to the guardians of the union, subject to the directions of the Commissioners, and to such authorities as are reserved by the act to justices of the peace and overseers of the poor.

(*i*) It is understood, that the Commissioners intend shortly to make some amendments of these orders. If they should be

promulgated before the publication of this work, they will be given in the Appendix.

2. No guardian can act, except at a meeting of the board, or except in summoning extraordinary meetings.

3. Three guardians concurring to be a quorum.

4. The guardians shall at their first meeting elect a chairman and vice-chairman, who shall continue to act until the next annual election of guardians, and one or the other to preside at every meeting, or in case of their absence, the guardians present shall elect a chairman for that meeting. When there shall be an equal number of votes upon any question, the chairman is to have a casting vote.

Meetings.—6. The guardians are to meet weekly on some fixed day of the week, and some fixed hour between eight o'clock in the forenoon and two o'clock in the afternoon.

7. Notice must be given of the first weekly meeting.

8. If three guardians be not present at any meeting, those present shall adjourn the same to the next day of weekly meeting, or some day previous, and the clerk must make a minute of the adjournment, and of the cause; and in case no guardian shall attend, the clerk must make an entry of such failure of attendance; one hour, and no more, being allowed to elapse from the time fixed for the commencement of the meeting, before any such entry is made.

9. The majority of the guardians present at any meeting may adjourn the same to the next weekly meeting, or any day previous.

10. Any two guardians, by a notice in writing, according to a form prescribed, may direct the clerk to summon an extraordinary meeting.

11. Notice of the first weekly meeting, and of the adjournment of a meeting, and of an extraordinary meeting, must be given in writing, according to the forms prescribed by the Commissioners, and signed by the clerk; and, two days before the meeting, the clerk must give to each guardian, or cause to be left at his place of abode, a copy of such notice.

12. If any case of emergency shall require that a meeting shall immediately take place, then any three guardians may meet, and act as if a regular notice had been given, and may take such case into consideration, and give order therein, which is only to have effect until the next weekly meeting.

Proceedings of the Board.—13. At each weekly meeting the business is to be conducted in the following order:—

1st. The minutes of the former meeting are to be read.

2dly. Such business as may have arisen out of the minutes so read to be first disposed of.

3dly. They shall consider and decide upon all applications since the last meeting, and also respecting the amount and nature of relief to be given or continued to the paupers upon the books of the parishes or places in the union, or within any of the workhouses thereof, until the next weekly meeting, or during such time as such relief may be deemed to be necessary.

4thly. They shall hear and consider applications of any paupers, which may be made at the existing meeting; but no such application shall be heard, unless the paupers shall have previously applied to the relieving officer for the parish from which such paupers claim relief.

5thly. They shall determine the kind of work to be performed by the paupers, either in or out of the workhouse.

6thly. They shall examine the books and accounts of the several relieving officers, receive reports on the state of the workhouse, and give all needful directions thereon.

7thly. They shall give the necessary directions to the churchwardens and overseers of the several parishes in the union, for providing such sums as may be requisite for the relief of the poor of such parishes, and for defraying such proportion of the general expenses of the union as shall be lawfully chargeable on them.

8thly. The guardians present, or the chairman, shall sign the minutes of the proceedings.

3. *Of other Parochial Officers.*

Paid Officers.—By *sect. 46*, the Commissioners may direct the overseers or guardians to appoint such paid officers with such qualifications as the Commissioners may think necessary, for superintending or assisting in the administration of the relief and employment of the poor, and for auditing the parish accounts; and the Commissioners are to define their duties, and determine their continuance in office or dismissal, and regulate the amount of their salaries, which are to be payable out of the poor rates, and recoverable as the salaries of assistant overseers. If they have the collection, receipt, or distribution of the parish monies, they must, like the overseers (A), account quarterly with the guardians or auditor, or if none such, then to the justices of the peace at their petty sessions.

By *sect. 48*, all paid officers are removable by order of the Commissioners, for incompetency or neglect; and, by *sects. 95 and 97*,

(k) See *ante*, p. 688.

they are liable to the same penalties as overseers for misconduct or embezzlement (*l*).

In pursuance of the authority given to the Commissioners by this act, they have directed that in each union, at the first meeting of the guardians, or within one month afterwards, the guardians shall appoint a fit and proper person to be *clerk* to the board of guardians, another to the office of *treasurer*, and so many competent persons as they shall think fit to be *relieving officers* of the union (*m*). The duties of all these officers are specifically defined by the rules of the Poor Law Commissioners. The salaries of the *clerk*, *treasurer*, and *relieving officer*, are to be such as the Commissioners shall from time to time direct (*n*).

Clerk.—By rule 18, the Commissioners have thus defined the duties of the clerk:—

1st. To attend all meetings of the guardians, and enter punctually into a book the minutes of the proceedings.

2nd. To keep all accounts, books of account, and other memorandums.

3rd. To conduct the correspondence of the board of guardians, and preserve the same, and all letters and documents belonging to the union.

4th. To give the proper notices of adjourned and other meetings.

And 5th. To observe all lawful orders of the guardians, and all rules issued by the Poor Law Commissioners.

By rule 15, if the clerk is prevented by sickness or accident from the performance of his duties, the board of guardians may appoint a temporary substitute. And by rule 16, in case no such substitute is appointed, or in case of any vacancy and delay in making a new appointment, the duties may be performed by the vice-chairman, or, in his absence, by some guardian appointed by the chairman.

Relieving Officers (o).—By rule 17, no person can be chosen a relieving officer, unless he will undertake to reside in one of the parishes for which he may be appointed to act, and to devote his whole time to the employment, not following any other trade or profession, nor unless he can read and write and keep accounts.

(*l*) See *ante*, p. 686.

(*m*) Rules 14 and 27 of Poor Law Commissioners.

(*n*) Rule 14.

(*o*) Any additional rules as to the duties of the relieving officer, which the Commissioners may make before this work is published, will be given in the Appendix.

By rule 19, the following are defined to be his duties:—

1st. To attend all meetings of the guardians.

2nd. To receive all applications for relief, and to examine into the merits and circumstances of each case, and report the same to the board at the next weekly meeting.

3rd. In cases of sudden and urgent necessity, to give such temporary relief as the case shall require, either by placing the pauper in the workhouse, or affording relief out of the house in articles of absolute necessity, but not in money, whether the applicant for relief be settled in any parish or place comprised in the union, or not.

4th. As soon as he has notice of the sickness, or any injury received by any pauper, he must notify the fact to the medical officer, and in the meantime furnish such relief as the emergency of the case may call for, and such further relief in or out of the workhouse as the case, upon the certificate of the medical officer, may appear to require.

5th. To keep a true account of all monies received and disbursed by him, for or on account of the relief of the poor, and also of all articles received and given out by him for the relief of the out-door poor, and to balance such account weekly, and present the same for inspection and approval at the meeting of the guardians.

6th. To report to the board of guardians at their weekly meeting all cases of relief given by the churchwardens or overseers of the poor of any parish or place, for which he shall be appointed to act.

7th. To enter in a book the names of, and other particulars relating to, the paupers relieved out of the workhouse, and the amount of relief afforded to them respectively, and to produce such book for the inspection of the guardians at every weekly meeting.

8th. Once every quarter, as soon as may be, after Lady Day, Midsummer Day; Michaelmas Day, and Christmas Day, to make out a list according to a certain form, for each parish for which he may be appointed to act, of the paupers who have received relief during the previous quarter, and of the relief afforded them in or out of the workhouse, and to affix copies of such lists upon the principal doors of the parish churches of the places for which such lists are made, there to remain for three successive Sundays.

9th. To observe all lawful orders and directions of the board of guardians, and likewise all rules issued by the Poor Law Commissioners.

Auditor.—By rule 27, the guardians must also at their first

weekly meeting, or within one month of the same, appoint a competent person to be auditor of the accounts, and immediately report such appointment to the Commissioners. The auditor must four times every year, within thirty days of Lady Day, Midsummer Day Michaelmas Day, and Christmas Day, examine and audit the accounts of the union and of the several parishes comprised therein, according to the laws in force for the administration of the relief of the poor; and he must with his own hand write a certificate of such audit at the foot of the account, according to a given form. And such accounts so audited and certified shall be open at all reasonable times to the inspection of the rate payers of the parish to which such accounts relate.

By rule 28, the auditor is to receive for the performance of his duty such sum as the board of guardians, with the consent of the Poor Law Commissioners, shall determine: and he is to remain in office until removed by the Commissioners, or by the board of guardians with the consent in writing of the Commissioners.

IV. OF THE RELIEF AND ORDERING OF THE POOR.

Having considered at length the powers and duties of the different officers connected with the management of the poor, it is proposed now to direct our inquiry to the persons entitled to relief, and to the mode prescribed by the law for administering such relief. And as there are now so many restrictions to giving relief to paupers, who are not inmates of the workhouse, it will be convenient to consider the nature of the relief which the law has provided for the out-door and the in-door poor, according to the following arrangement:—

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1. <i>How to be administered according to the Rules of the Poor Law Commissioners</i>	706	1. <i>Of Unions and Incorporated Districts</i>	729
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I. WHERE RELIEF MAY BE GIVEN OUT OF THE WORKHOUSE (*o*).

1. Administration of it under the Authority of the Poor Law Commissioners	706	4. By providing Land and Houses ..	718
2. When it may be ordered by Justices of the Peace	709	5. Relief of Army and Navy Pensioners	723
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1. Administration of Relief under the Authority of the Poor Law Commissioners.

Mode of Relief.—By 4 & 5 Will. 4, c. 76, s. 52, the Poor Law Commissioners may order to what extent, and for what period, the relief to be given to able bodied persons or to their families in any particular parish or union may be administered out of the workhouse, by payment in money, or with food or clothing in kind; and all relief given contrary to such orders is declared to be unlawful, and is to be disallowed in the accounts of the parish officers. But, in case the overseers or guardians, upon consideration of the special circumstances of such parish or union, or of any person or class of persons therein, be of opinion that the application of such orders at the time or in the manner prescribed by the Commissioners would be inexpedient, they may delay the operation of such orders for thirty days; but they must, twenty days before the expiration of such thirty days, make report of the special circumstances to the Commissioners, in which case all relief given before an answer to such report is returned by the Commissioners shall not be deemed unlawful, although given contrary to such orders. But, notwithstanding the special circumstances, the Commissioners may by a peremptory order direct that from a day to be fixed such orders as they think expedient shall be enforced; and if any relief be given by the overseers or guardians after the last-mentioned period, contrary to such last-mentioned order, the amount will be disallowed in the accounts. But in case the overseers or guardians depart from the order in a particular instance of emergency, and within fifteen days report the same and the grounds thereof to the Commissioners, and the Commissioners shall approve of such departure; or if the relief given shall have been in food, temporary lodging, or medicine, and shall have been so reported, then such relief shall not be disallowed.

In pursuance of the authority conferred on the Commissioners by the above act, they have by a General Order, dated the 2nd August,

(c) For any alterations in this mode of relief in the bill intended to be brought in by Sir James Graham, see *Appendix*.

1841, directed that relief shall be given according to the following rules:—

Article 1. Every able-bodied person, male or female, requiring relief from any parish within any of the said unions, shall be relieved wholly in the workhouse of the union, together with such of the family of every such able-bodied person as may be resident with him or her, and may not be in employment, and together with the wife of every such able-bodied male person, if he be a married man and if she be resident with him; save and except in the following cases:—

- 1st. Where such person shall require relief on account of sudden and urgent necessity.
- 2nd. Where such person shall require relief on account of any sickness, accident, or bodily or mental infirmity affecting such person, or any of his or her family.
- 3rd. Where such person shall require relief for the purpose of defraying the expenses, either wholly or in part, of the burial of any of his or her family.
- 4th. Where such person being a widow, shall be in the first six months of her widowhood.
- 5th. Where such person shall be a widow and have a legitimate child or legitimate children dependent upon her, and incapable of earning his, her, or their livelihood, and no illegitimate child born after the commencement of her widowhood.
- 6th. Where such person shall be confined in any gaol or place of safe custody.
- 7th. Where the relief shall be required by the wife, child, or children of any able-bodied man, who shall be in the service of her Majesty as a soldier, sailor, or marine.
- 8th. Where any able-bodied person, not being a soldier, sailor, or marine, shall not reside within the union, but the wife, child, or children of such person shall reside within the same, the board of guardians of the union, according to their discretion, may afford relief in the workhouse to such wife, child, or children, or may allow out-door relief for any such child or children being within the age of nurture, and resident with the mother within the union.

Article 2. In every case in which out-door relief shall be given on account of sickness, accident, or infirmity to any able-bodied male person resident within any of the said unions, or to any member of the family of any able-bodied male person, an extract from the

medical officer's weekly report (if any such officer shall have attended the case) stating the nature of such sickness, accident, or infirmity, shall be specially entered in the minutes of the proceedings of the board of guardians of the day on which the relief is ordered or subsequently allowed.

But if the board of guardians shall think fit, a certificate under the hand of a medical officer of the union, or of the medical practitioner in attendance on the party, shall be laid before the board, stating the nature of such sickness, accident or infirmity, and a copy of the same shall be in like manner entered on the minutes.

Article 3. No relief shall be given from the poor rates of any parish comprised in any of the said unions, to any person who does not reside in some place within the union, save and except in the following cases:—

- 1st. Where such person, being casually within such parish, shall become destitute.
- 2nd. Where such person shall require relief on account of any sickness, accident, or bodily or mental infirmity, affecting such person or any of his or her family.
- 3rd. Where such person shall be entitled to receive relief from any parish in which he may not be resident, under any order which justices may by law be authorized to make.
- 4th. Where such person being a widow shall be in the first six months of her widowhood.
- 5th. Where the relief shall be allowed for a child under the age of sixteen, maintained in a workhouse or establishment for the education of pauper children not situate within the union.
- 6th. Where any person not being able-bodied shall not reside within the union, and the wife, child, or children of such person shall reside within the same, relief may be afforded to such wife, child, or children by the guardians of the union as they shall think fit.
- 7th. Where such person shall at some time within the twelve calendar months next preceding the date of this order have been in the receipt of relief from some parish in the union, being settled in such parish, and not being resident therein.

Article 4. Provided always, that in case the guardians of any of the said unions shall depart in any particular instance from any of the regulations hereinbefore contained, and shall within fifteen days after

such departure report the same and the grounds thereof to the Poor Law Commissioners, and if the Poor Law Commissioners shall approve of such departure, then the relief granted in such particular instance shall, if otherwise lawful, not be deemed to be unlawful or be subject to be disallowed.

Article 5. No relief, which shall be contrary to any regulations in this order, shall be given by way of loan; and every relief which may be given to or on account of any person above the age of twenty-one, or to his wife, or any part of his family under the age of sixteen, under Article 1, or any of the exceptions thereto, or under any of the exceptions to Article 3, or under the proviso in Article 4, may, if the guardians shall think fit, be given by way of loan.

Medical Relief.]—By *rule 22*, the guardians shall contract with some competent person or persons duly licensed to practise as a medical man to be the medical officer or officers of the said union, and to attend duly and punctually upon all sick paupers belonging to and resident within the union, either in the workhouse or otherwise, and to supply such sick paupers with necessary medicines; and such contract shall contain a clause, by which the said medical officer shall engage to attend at a fair and reasonable charge per head, to be named in such contract, on all persons not belonging to any parish or place comprised in the said union, whom by law any such parish or place may be bound to relieve, whether under suspended orders of removal or otherwise.

23. The medical officer shall in every case, when required by the guardians, or the relieving officer, or by the pauper on whom he is attending, give a certificate under his hand of the sickness of such pauper, or other cause of the attendance of such medical officer, the extent and nature of such sickness at the time of giving such certificate, and its probable duration, and such other particulars as may show how far the applicant is prevented from attending to his usual calling.

24. The medical officer shall make a weekly return to the board of guardians, according to the form F. hereunto annexed, and shall also attend the board of guardians when summoned by them (*p*).

2. *Where Relief may be ordered by Justices of the Peace.*

Before the passing of the recent statute of 4 & 5 Will. 4, c. 76, the

(*p*) It is understood that the Commissioners intend shortly to make some alteration in the order relating to the medical

officer of the union. If it is made before the publication of this work, the order will be given in the Appendix.

justices of the peace entirely directed the mode and amount of relief which should be given to the poor. But this part of their duties has been now by that statute almost wholly transferred to the Poor Law Commissioners. There are some statutes, however, still in force relating to the authority of the justices, which were left untouched by the 4 & 5 Will. 4, c. 76.

By the 3 W. & M. c. 11, s. 11, the overseers were required to keep a register of all persons admitted to receive relief, and no other person is allowed to receive collections at the charge of the parish but by the authority of *one justice* of the peace.

By 9 Geo. 1, c. 7, s. 1, no justice of the peace shall order relief to any poor person dwelling in any parish, until oath be made before such justice of some matter which he shall judge to be reasonable cause for having such relief, and that the person had applied for relief to the parishioners, or to two of the overseers, and was by them refused to be relieved, and until such justice hath summoned two of the overseers to show cause why such relief should not be given, and the person so summoned hath been heard, or made default to appear before such justice.

These statutes, therefore, still authorize justices of the peace to exercise a control over the overseers in the administration of relief to the poor. But this relief can now, by the provisions of the 4 & 5 Will. 4, c. 76, only be exercised in parishes in which there is no board of guardians, nor any select vestry.

Refusal of Paupers to go into Workhouse.—By 9 Geo. 1, c. 7, s. 4, if any poor person of any parish, or united parishes, shall refuse to be lodged, kept, or maintained in the house, which the parish officers were by that act authorized to provide for the employment of the poor, he is directed to be put out of the parish-book, and declared not entitled to ask or receive relief from the churchwardens and overseers (*q*).

Under this provision, it has been held that where a pauper refuses to go into the parish workhouse, the overseers may refuse to continue to him his weekly allowance (*r*). But where a mother asked for relief for her child, and not for herself, the overseers were held bound

(*q*) The above provision, which was rendered nugatory by the enactments of the 36 Geo. 3, c. 23, and 55 Geo. 3, c. 137, s. 3, enabling justices of the peace to order relief to be given to poor persons at their

dwellings, is now again in force; as the 4 & 5 Will. 4, c. 76, s. 53, has repealed the enactments of those two statutes in this respect.

(*r*) *R. v. Carlisle*, cited 3 T. R. 637.

to relieve the child, without compelling the mother to go into the workhouse (s).

Aged and Infirm Persons.—But by 4 & 5 Will. 4, c. 76, s. 27, where any union of parishes is formed under that act, two justices of the peace, acting for the district where such union may be situated, may direct, by order under their hands and seals, that relief shall be given to any adult person, who shall from old age or infirmity of body be wholly unable to work, without requiring that such person shall reside in any workhouse; provided that one of the justices shall certify in the order, of his own knowledge, that such person is wholly unable to work; and provided also, that such person shall be lawfully entitled to relief in such union, and shall desire to receive the same out of the workhouse.

Cases of sudden and urgent Necessity.—By sect. 54, where any parish is under the government and control of any guardians of the poor, or a select vestry, whether forming part of any union or incorporation, or not, no overseer can give any further or other relief or allowance from the poor rate than such as shall be ordered by such guardians or select vestry, except in cases of sudden and urgent necessity, in which cases he is required to give such temporary relief as each case shall require, in articles of absolute necessity, but not in money, and whether the applicant for relief be settled in the parish where he shall apply for relief, or not. If the overseer shall refuse or neglect to give such necessary relief in any such case of necessity to poor persons not settled nor usually residing in the parish to which the overseer belongs, any justice may order the overseer, by writing under his hand and seal, to give such temporary relief in articles of absolute necessity, as the case shall require, but not in money. In case the overseer disobeys such order, he is liable, on conviction before two justices, to a penalty not exceeding 5*l.* Any justice may also give a similar order for medical relief (only) to any parishioner, as well as out-parishioner, where any case of sudden and dangerous illness may require it; and any overseer will be liable to the same penalty for disobeying it. But no justice can order relief to any person from the poor rates, except as before provided.

1. *Order of two Justices for Relief to an aged and infirm person, under 4 & 5 Will. 4, c. 76, s. 27 (t).*

Kent, } To C. D., the relieving officer of the poor of the union of the parishes of
to wit. } — and —, in the county of Kent.

Whereas complaint hath been made this day before us, J. P. and K. P., esquires,

(s) *R. v. Haigh*, 3 T. R. 637.

(t) See above.*

POOR.—(*Relief.*)

two of her Majesty's justices of the peace in and for the said county of Kent, usually residing for the district wherein the above union is situated, that A. B., an adult person residing in the parish of — aforesaid, is from old age [*or* "infirmity of body"] wholly unable to work; and that the said A. B. is lawfully entitled to relief in the said union, and is desirous to receive the same out of the workhouse: These are therefore to order and require you to give necessary and proper relief to the said A. B., without requiring him to reside in the workhouse of the said union. Given under our hands and seals, this — day of —, in the year of our Lord 1842.

J. P. (L. s.)

K. P. (L. s.)

I do hereby certify, of my own knowledge,
that the above named A. B. is wholly unable
to work as aforesaid.

J. P.

2. *Order of one Justice, in case of urgent necessity, for temporary Relief, under 4 & 5 Will. 4, c. 76, s. 54 (u).*

Kent, } To the churchwardens and overseers of the poor of the parish of —, in
to wit. } the county of —.

Whereas complaint on oath hath been this day made unto me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, by A. B., not settled nor usually residing in your parish, that he is very poor and impotent, and utterly unable to provide for himself, and that he hath applied to you for relief, which you have refused to grant, and that he is in danger of perishing for want of immediate assistance: and it appears to me that this is a case of sudden and urgent necessity: These are therefore to order and require you forthwith to give to him the said A. B. such temporary relief in articles of absolute necessity, as the case requires; and for so doing this shall be your sufficient warrant. Given under my hand and seal this — day of —, A. D. 1842.

3. *Order of a Justice for Medical Relief only, in a case of sudden and dangerous Illness, under the same section.*

Kent, } To the churchwardens and overseers of the parish of A., in the county of
to wit. } Kent.

Whereas complaint hath been this day made to me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county of Kent, that A. B., of your parish [*or* "whose place of settlement is in your parish, but who is now dwelling in the parish of M."], a poor and impotent man, and unable to provide for himself, is afflicted with a sudden and dangerous illness: These are therefore to order and require you forthwith to provide and afford such proper and necessary medical relief for the said A. B. as his case may require; and for your so doing this shall be your sufficient warrant. Given under my hand and seal, &c.

4. *Summons to two Overseers, to shew cause why they do not afford Relief (x).*

Kent, }
to wit. } To the constable of —, in the parish of —, in the said county.

Whereas A. B., of your parish, hath this day made oath before me, J. P., esquire,

(u) See *ante*, p. 711.

(x) See 9 Geo. 1, c. 7, s. 1, *ante*, p. 710.

one of her Majesty's justices of the peace in and for the said county, that he the said A. B. is very poor and impotent, and not able to work, or to provide for himself and his family, and that he the said A. B. did, on — last, apply to C. D. and E. F., overseers of the poor of the said parish, and was by them refused to be relieved: These are therefore to require you, in her Majesty's name, to summon two of the overseers of the poor of the said parish to appear before me on — next, at — in the said county, at the hour of — in the forenoon of the same day, to shew cause why relief should not be given to the said A. B. And be you then there with this precept, to certify what you shall have done in the execution hereof.

Given under my hand and seal the — day of —, in the year of our Lord 1842.

J. P. (L. S.)

5. *Order of Relief on the above Summons; which can only be granted where the Parish has no select Vestry, or Guardians (y).*

Kent, } To the churchwardens and overseers of the poor of the parish of —, in
to wit. } the said county.

Whereas A. B., of the parish of —, in the said county, labourer, hath this day made oath before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, that he the said A. B. is very poor and impotent, and not able to work or to provide for himself and his family, and that he the said A. B. did, on the — day of — instant, apply for relief to C. D. and E. F., two of the overseers of the poor of the said parish, and was by them refused to be relieved: And whereas the said C. D. and E. F. have been duly summoned to appear here this day before me the said justice, to shew cause why relief should not be given to the said A. B.; but the said C. D. and E. F. have not appeared before me, pursuant to the said summons: And whereas [*stating special grounds of relief*]: These are therefore to order and require you to give such necessary and proper relief to the said A. B., as the case may require; and for your so doing this shall be your sufficient warrant.

Given under my hand and seal this — day of —, in the year of our Lord 1842.

6. *Order of two Justices upon the Churchwardens and Overseers of a Parish, for Maintenance of a poor Child settled in that parish, but residing with its Mother in another Parish for nurture.*

County of } To the churchwardens and overseers of the poor of the parish of D.,
—, } in the county of —.

Whereas J. P., esquire, one of her Majesty's justices of the peace for the said county, did, on the complaint of the churchwardens and overseers of the poor of the parish of H., in the said county, issue a summons under his hand and seal, dated the — day of — instant, directed to the churchwardens and overseers of the poor of the said parish of D., thereby requiring them, or some one of them, to appear before him and such other of her Majesty's justices of the peace for the said county as should be at —, in —, in the same county, this day, at — o'clock in the forenoon, to show cause why an order should not be then and there made for the payment by the same churchwardens and overseers of the poor of the said parish of D. of a weekly sum to the said churchwardens and overseers of the poor of the parish of H., for the main-
te-

nance of A. B., a bastard, born in the said parish of D., and then resident in the said parish of H. as a nursechild with his mother M. B. : And whereas A. O., one of the overseers of the poor of the said parish of D., having appeared before us, J. P. and K. P., esquires, two of her Majesty's justices of the peace for the said county, in pursuance of the before-mentioned summons for that purpose, has not showed to us any sufficient cause why an order should not be made upon them, the said churchwardens and overseers of the poor of the said parish of D., to pay a weekly sum to the said churchwardens and overseers of the poor of the said parish of H., towards the maintenance of the said bastard child, [or, "And whereas it hath been duly proved unto us, upon oath, that the said churchwardens and overseers of the poor of the said parish of D. have been duly summoned to appear before us, the said justices, to show cause why an order should not be then and there made; but they, or any of them, have not appeared in pursuance thereof, and have not showed to us any sufficient cause why the said order should not be made."]] And whereas the said M. B., in and by her examination, taken in writing, upon oath this day before us, the said justices, hath deposed that she was delivered of the said A. B. in the said parish of D., who was born a bastard there, and is now of the age of — years or thereabouts; that he the said A. B. is now chargeable to the said parish of H., and that she the said M. B. is not willing to part with her said child, until he attain the age of seven years: Now, in consideration thereof, and on the complaint of the churchwardens and overseers of the poor of the said parish of H., we do hereby order the said churchwardens and overseers of the poor of the said parish of D., or some of them, to pay to the said churchwardens and overseers of the poor of the said parish of H., the sum of — shillings weekly and every week, for and towards the support and maintenance of the said A. B., as long as the said A. B. shall be chargeable to the said parish of H. and shall not have arrived at the age of seven years, or until they shall be ordered according to law to forbear the said allowance.

Given under our hands and seals at — aforesaid, the — day of —, 1842.

J. P. (L. S.)

K. P. (L. S.)

3. *When Relief may be given by way of Loan.*

By 59 Geo. 3, c. 12, s. 29, whenever it appears to the justices, or to the general or select vestry, or to the guardians, governors or directors appointed under any special or local act, or to the overseers of the poor, to whom application shall be made for relief for any poor person, that he might, but for his extravagance, neglect or wilful misconduct, have been able to maintain himself, or to support his family (as the case may be), the overseers (by the direction of the justices, or of the general or select vestry, or of such guardians, governors or directors, where application shall have been made to them respectively,) may advance money weekly, or otherwise as may be requisite, to the person so applying, by way of loan only, and take his receipt for and engagement to repay every sum to be so advanced, for which no stamp duty shall be required. And any two

justices, upon the application, within one year after any such loan, of one of the overseers, may summon the person to whom any such money shall have been so advanced; and if it shall appear to them that he is able by weekly instalments or otherwise to repay the whole, or any part of the money, they may make an order under their hands and seals for the repayment of the whole or of part, at such times and in such proportions and manner as they shall see fit; and upon any default of payment, they may commit such person to the common gaol or house of correction not exceeding three calendar months, unless the sum due shall be sooner paid.

When Relief to be considered a Loan.].—And by 4 & 5 Will. 4, c. 76, s. 58, any relief, or the cost price thereof, which shall be given to or on account of any poor person above the age of twenty-one, or to his wife, or any part of his family under the age of sixteen, and which the Poor Law Commissioners shall by any rule, order or regulation declare or direct to be given, or considered as given, by way of loan, and whether any receipt for such relief, or engagement to repay the same or the cost price thereof, or any part thereof, shall have been given, or not, shall be considered and the same is declared to be a loan to such poor person.

Provision for re-payment out of Wages.].—By sect. 59, in all such cases any justice, upon the application of the overseers or guardians of the parish or union providing such relief, and upon proof of the same having been given to or on account of any such person, his wife or family, and of the same or any part thereof still remaining due, may issue a summons requiring such person, as well as his master or employer, or some person on his behalf, to appear before any two justices at a time and place to be named, to shew cause why any wages due, or from time to time to become due from such master or employer, should not be paid over in whole, or in part, to the overseers or guardians. And if no sufficient cause be shown, or in default of appearance on the return of the summons, the justices may, by order under their hands, direct the master or employer for the time being, from whom any wages shall be due or from time to time become due or payable to such poor person, to pay either in one sum, or by such weekly or other instalments as the justices shall think fit, (taking into consideration the circumstances of such poor person and his family,) out of such wages to such overseers or guardians the amount of such relief, or so much as shall from time to time be due or unpaid. The receipt of the overseer or guardian is declared to be

a good discharge; and if any such master or employer shall refuse or neglect to pay to the overseer or guardian producing any such order the money thereby directed to be paid, according to the terms of such order, and at the periods thereby fixed for payment, the same may be levied and recovered, and the payment from time to time enforced against such master or employer, in the same manner (z) as penalties and forfeitures are recoverable under the act.

Militia man.—By sect. 60, so much of the 43 Geo. 3, c. 47, as authorized a justice of the peace to order overseers to pay a weekly allowance to the families of persons serving in the militia, is repealed.

1. *Summons of a Master and Servant, for Re-payment of a Loan to the Servant,*
under 4 & 5 Will. 4, c. 76, s. 58.

County of —, }
to wit. } To the constable of —, in the said county.

Whereas complaint hath been made to me, J. P., esquire, one of the justices of the peace for the county of —, by A. B., guardian of the poor of the parish of —, in the said county, and it hath been also duly proved before me that C. D., a poor person in the service and employment of F. G., of —, in the said county, wheelwright, at certain weekly wages, has received the sum of £ — as relief, by way of loan from the said parish, and that the same now remains due and unpaid: These are to require you, in her Majesty's name, to cause the said C. D. and F. G. to appear before me, and one other of her Majesty's justices of the said county, on the — day of — next, at the house of —, in the said county, at the hour of — in the forenoon, to show cause why the wages now due, or which may hereafter from time to time become due, from the said F. G. to the said C. D. should not be paid over, in whole or in part, to such guardians, in satisfaction of the said sum so remaining due.

Given under my hand, this — day of —, 1842.

J. P.

2. *Order for Re-payment of the Loan.*

County of —, } Whereas A. B., one of the guardians of the poor of the parish of
to wit. } on the — day of — last, appeared before J. P., esquire,
one of her Majesty's justices of the peace in and for the said county, and complained that C. D. had received the sum of £ —, as relief by way of loan, from the said parish, and that the same still remained due; and that the said C. D., was in the employment of F. G., of —, in the said county, wheelwright, at certain weekly wages; and whereas the said C. D. and F. G. have been duly summoned, in pursuance of the statute in such case made and provided, to appear before us, J. P. and N. O., esquires, two of her Majesty's justices of the peace for the said county, to show cause why the wages now due, or which may hereafter become due, from the said F. G. to the said C. D., should not be paid over to such guardian, in whole or in part, in satisfaction of the said sum of £ — so remaining due; and whereas the said parties have appeared before us this day in obedience to the said summons: Now we, the said

(z) See *ante*, sect. 99, p. 678.

justices, having duly heard the said parties, in the presence and hearing of each other, and it having now been duly proved to our satisfaction, that the sum of £ — was, on the — day of —, 1842, advanced by the said A. B. on behalf of the said parish to the said C. D. as relief by way of loan, and that the same now remains due and owing, and that the sum of £ — is now due to the said C. D. from the said F. G. as wages, and that the said C. D. is in the employment of the said F. G. at the wages of — per week, we, the said justices, having considered the circumstances of the said C. D. and his family, do, in pursuance of the statute in such case made and provided, adjudge, order and direct that the said F. G. do forthwith, out of the wages so due to the said C. D., pay unto the said A. B. as such guardian the sum of £ —, and shall hereafter, on the Saturday in every week, out of the wages hereafter becoming due to the said C. D., pay the sum of — shillings to the said guardian, so long as the said C. D. shall be in the employ of the said F. G., and until the said sum of £ —, now due from the said C. D., shall be fully paid and satisfied.

Given under our hands this — day of —, in the year of our Lord 1842.

J. P.

N. O.

Warrant of Distress.

County of } To the constable of — in the said county, and to all other consta-
— bles in and for the said county.

Whereas by an order under the hands of us, J. P. and N. O., esquires, two of her Majesty's justices of the peace in and for the said county, duly made, and dated the — day of — instant, F. G., of —, in the said county, wheelwright, was ordered and directed to pay to A. B., one of the guardians of the poor of the parish of —, the sum of —, being parcel of certain wages then due from the said F. G. to one C. D. [*&c. reciting the latter part of the order in the past tense*], and whereas, on the — day of — last, the sum of — became due and owing from the said F. G. to the said C. D., as wages earned by the said C. D. for — weeks ending on the day last aforesaid, and out of which said wages the said F. G., by virtue of the said order, was bound to pay and ought to have paid unto the said A. B., as such guardian as aforesaid, the sum of — But the said F. G., although the said last-mentioned sum hath been duly demanded of him by the said A. B., hath not as yet paid the same, or any part thereof, to the said A. B., or to any person on behalf of the said parish, but therein hath made default These are therefore to command you forthwith to make distress of the goods and chattels of the said F. G., and if, within the space of [eight] days next after the making of such distress, the said last mentioned sum of £ —, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising from such sale, that you do pay the said sum of £ — to the said A. B., rendering the overplus, if any, upon demand, unto the said F. G., the reasonable charges of taking, keeping and selling the said distress being first deducted, and if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein as to the law doth appertain.

Given under our hands this — day of —, in the year of our Lord 1842.

J. P.

N. O.

4. *Relief by providing Land and Houses.*

Building Houses on the Waste.—By 5 Eliz. c. 2, s. 5, the churchwardens and overseers, or the greater part of them, by leave of the lord of the manor, whereof any waste or common within the parish is parcel, and on agreement with him made in writing, under his hand and seal, or otherwise, according to any order to be set down by the justices in session, by like leave and agreement of the lord in writing under his hand and seal, may build in fit and convenient places of habitation in such waste or common, at the charge of the parish, or otherwise of the hundred or county, to be rated and gathered in the manner expressed by the act, convenient houses of dwelling for the impotent poor.

Employment in Cultivation of Land.—By 59 Geo. 3, c. 12, s. 12, the churchwardens and overseers of the poor of any parish, with the consent of the inhabitants in vestry assembled, may take into their hands any land which shall belong to the parish, or hire and take on lease any suitable portion of land within or near to the parish, not exceeding *twenty acres* in the whole (extended to fifty acres by 1 & 2 Will. 4, c. 42, s. 1,) and may employ and set to work in the cultivation of such land, on account of the parish, any such persons as by law they are directed to set to work, and pay to such of the poor persons so employed as shall not be supported by the parish reasonable wages for their work; and the poor so employed shall have the same remedy for the recovery of their wages, and subject to the like punishment for misbehaviour in their employment, as other labourers in husbandry.

Parish may let Land to Poor Persons.—And for the promotion of industry among the poor, *sect. 13* enables the churchwardens and overseers, with the consent of the vestry, to let any portion of the parish land, or the land so purchased or taken on account of the parish, to any poor and industrious inhabitant of the parish, to be by him occupied and cultivated on his own account, and for his own benefit, at such reasonable rent, and for such term as shall by the vestry be fixed and determined.

Recovery of Possession of Parish Houses.—By *sect. 24*, if any person who shall have been permitted to occupy any parish or town house, or any other tenement or dwelling belonging to or provided by or at the charge of any parish for the habitation of the poor, or who shall have unlawfully intruded himself into any such

tenement or dwelling, or into any house, tenement or hereditament belonging to such parish, shall refuse or neglect to quit the same, and deliver up the possession thereof to the churchwardens and overseers within one month after notice and demand in writing for that purpose, signed by such churchwardens and overseers, or the major part of them, shall have been delivered to the person in possession, or in his absence affixed on some notorious part of the premises, any two justices, upon complaint to them made by one of the churchwardens and overseers, may issue their summons to the party to appear before the justices, which summons may be either delivered to him, or in his absence affixed on the premises, seven days at least before hearing the complaint; and the justices, if they shall find the complaint to be true, are, by warrant under their hands and seals, to cause possession to be delivered to the churchwardens and overseers.

Recovery of Parish Land.—By *sect. 25*, if any person, to whom any land appropriated, purchased or taken under that act for the employment of the poor of any parish, or to whom any other parish lands shall have been let for his own occupation, shall refuse to quit and deliver up the possession thereof to the churchwardens and overseers at the expiration of the term for which the same shall have been demised or let; or if any person shall unlawfully enter upon, or take or hold possession of any such land, or any other parish land or hereditaments, the churchwardens and overseers may recover possession in the same manner as is provided in the former section.

Inclosing part of the Waste.—By 1 & 2 Will. 4, c. 42, s. 2, the churchwardens and overseers may inclose from any waste or common land lying in or near the parish, with the consent in writing of the lord of the manor and major part in value of the persons having right of common, signified under their hands and seals, any part of such waste or common not exceeding fifty acres, and cultivate and improve the same for the benefit of the parish and the poor within the same, or let any part to any poor and industrious inhabitant to be occupied and cultivated on their own account.

By *sect. 3*, the same power is given to the guardians of the poor of any united parishes, and to overseers of townships and places having separate overseers, and maintaining their own poor.

By *sect. 4*, the provisions of the 59 Geo. 3, c. 12, are extended to lands provided under this act; but, by *sect. 5*, no settlement can be gained by reason of any poor inhabitant renting and occupying, or paying parochial taxes for such land, either alone, or with any other land or tenement.

Inclosures from Waste Lands of the Crown.—By 1 & 2 Will. 4, c. 59, s. 1, the churchwardens and overseers of any parish may inclose from any forest or waste lands belonging to the crown lying in or near to the parish, with the consent in writing of the lords of the treasury, to be signified by some warrant under their hands, any portion of land not exceeding fifty acres, for the purpose of cultivating and improving the same for the use and benefit of such parish and the poor within the same. But (by *sect. 2*) no person to whom such land is let can thereby gain a settlement.

Letting Allotments under Inclosure Acts.—By 2 Will. 4, c. 42, s. 1, the trustees of allotments under inclosure acts made for the benefit of the poor, together with the churchwardens and overseers, may also let portions of any such allotment, being not less than one fourth of a statute acre, and not exceeding the whole of such acre, to any one individual, as a yearly occupant from Michaelmas to Michaelmas, and at such rent as land of the same quality is usually let for in the parish, to such industrious cottagers of good character, being day labourers or journeymen legally settled in the parish, and dwelling within or near its bounds, as shall apply for the same under the provisions of the act.

By *sect. 3*, a vestry is directed to be held annually the first week in September to receive applications.

Proceedings to compel the delivery up of Possession.—By *sect. 5*, if the rent is in arrear for four weeks, or if, at the end of any one year, it is the opinion of the vestry that the land has not been duly cultivated, the churchwardens and overseers may serve a notice to quit upon the occupier, who is bound to deliver up possession within one week after service of the notice.

By *sect. 6*, if any occupier shall refuse to quit when so required, or if any other person shall unlawfully hold possession of such land, any one of the churchwardens or overseers may exhibit a complaint before two justices, who are required to summon the party to appear before them; and upon his appearance, or upon proof on oath that the summons has been duly served upon him or left at his usual place of residence, or if there shall be any difficulty in finding such residence, then upon proof on oath of such difficulty, and that the summons has been affixed on the door of the parish church,—and in any extra-parochial place, on some conspicuous place therein,—the justices may proceed to hear and determine the complaint, and if they find it to be true, may, by warrant under their hands and seals, cause possession to be delivered to the churchwardens and overseers.

Recovery and Application of Rents.—By *sect. 7*, all arrears of rent are recoverable by the churchwardens and overseers by application to two justices in petty sessions, who may summon the party, and issue a warrant of distress.

By *sect. 8*, the rent is to be applied by the vestry in the purchase of fuel, to be distributed in the winter season among the poor parishioners legally settled and resident in or near the parish.

Where Allotments inconveniently situated.—By *sect. 9*, if any allotment should lie at an inconvenient distance from the residences of the cottagers, the vestry may let it, and hire in lieu thereof, for the purposes of the act, land of equal value more favourably situated.

By *sect. 10*, no habitations are to be erected on any of the portions of land so demised.

By *sect. 11*, the provisions of the act are extended to the last acts above mentioned of 1 & 2 Will. 4, c. 59, and 1 & 2 Will. 4, c. 42.

Where cottages were erected on lands purchased with charitable funds given for the use of the poor, and others were afterwards added from funds arising from the sale of lands under an inclosure act, which were also directed to be applied for the relief of the poor, and the repairs were paid out of the poor rates, and the rents were accounted for as rates; it was held, that such cottages were not to be deemed *workhouses*, within the 4 & 5 Will. 4, c. 76, ss. 23, 26, 109, and the 5 & 6 Will. 4, c. 69, which the guardians of an union were entitled to take under the provisions of those statutes, although in occasional instances paupers had been placed in such cottages; it not being the general purpose to which they were applied (*a*).

1. *Information of an Overseer against a person for refusing to quit possession of a Parish House within one Month after Notice and Demand, under the 59 Geo. 3, c. 12, s. 24 (b).*

Kent, } The information and complaint of A. B., one of the overseers of the poor
to wit. } for the parish of — in the said county, made on oath before me J. P.,
esquire, one of her Majesty's justices of the peace in and for the said county, the —
day of —, A. D. 1842, who says that C. D., a poor person residing in the said parish,
having been permitted to occupy a dwelling house belonging to the said parish, situate
at — in the said parish, has refused to quit the same and deliver up the possession
thereof to the churchwardens and overseers of the poor of the said parish, within one
month after notice and demand in writing under the hands of the major part of the
said churchwardens and overseers was delivered to the said C. D. Whereupon the

(*a*) *Cantrell v. Windsor Union*, 4 Bing. N. S. 34ⁿ. (*b*) See *ante*, p. 718.

said A. B. prays that the said C. D. may be summoned to answer the said complaint, and to be further dealt with according to law.

A. B., Overseer of the Poor.

Taken before me, J. P.

2. *Summons thereupon (c).*

Kent, } To C. D. of the parish of —, in the said county of —.
to wit. }

Whereas A. B., one of the overseers of the poor of the parish of — in the said county, has this day preferred an information and complaint upon oath against you before me J. P., esquire, one of her Majesty's justices of the peace in and for the said county, for that you the said C. D., being a poor person residing in the said parish, and having been permitted to occupy a dwelling house belonging to the said parish, situated at —, in the said parish, have refused to quit the same and deliver up the possession thereof to the churchwardens and overseers of the poor of the said parish within one month after notice and demand in writing hath been duly served upon you for that purpose: These are therefore to require you personally to appear before me and such other of her Majesty's justices of the peace for the said county as shall be present, at the — in — in the said county of — on the — day of — next, at — o'clock in the forenoon, then and there to answer the premises. Herein fail not. Given under my hand and seal this — day of —, A. D. 1842.

3. *Warrant thereon, for delivering of Possession.*

Kent, } To the constable of the parish of — in the said county.
to wit. }

Whereas A. B., one of the overseers of the poor of the parish of — in the said county, did, on the — day of — last, prefer an information and complaint upon oath before me J. P., esquire, one of her Majesty's justices of the peace in and for the said county, against C. D., a poor person residing in the said parish, for that he the said C. D. having been permitted to occupy a dwelling house belonging to the said parish, situated at — in the said parish, had refused to quit the same and deliver up the possession thereof to the churchwardens and overseers of the poor of the said parish, within one month after notice and demand in writing for that purpose under the hands of the major part of the said churchwardens and overseers had been delivered to him the said C. D.: And whereas on the — day of — last, I, the said J. P., duly issued a summons to require the said C. D. to appear before me the said J. P. and such other of her Majesty's justices as should be present this day, at —, in the said county, to answer unto the said complaint, and the said C. D. hath accordingly appeared before us, pursuant to the said summons: Now we, the said justices, having heard what the said C. D. had to allege in answer to the said complaint, and upon mature deliberation thereupon had, have proceeded to hear and determine the matter of the said complaint, and do find and adjudge the same to be true; we do therefore charge and command you, that you, without delay, cause possession of the said dwelling house to be delivered to the churchwardens and overseers of the poor of the said parish, or some or one of them, pursuant to the directions of an act of parliament passed in the fifty-ninth

(c) This must be either delivered to the party, or in his absence affixed on the premises, seven days at least before the time appointed for the hearing of the complaint.

year of the reign of his late Majesty King George the Third, intituled "An Act to amend the Laws for the Relief of the Poor:" And for so doing this shall be your sufficient warrant. Given under our hands and seals at — in the said county of — the — day of —, A. D. 1842.

J. P.

K. P.

5. *Relief to Army and Navy Pensioners.*

When Pensions may be assigned.—By 2 & 3 Vict. c. 51, s. 3, when any pensioner, or person entitled to, or in receipt of, any pension or other allowance, in respect of his service in the navy, marines, army, or ordnance, shall apply for temporary relief to the guardians of any union or parish,—or to the churchwardens or overseers of any parish, in which the administration of the relief of the poor has not been directed to be governed by a board of guardians, or not situate within any union, so long only as such parish is not governed by such guardians, nor situate within any union,—or shall receive relief from the said guardians, churchwardens or overseers, the guardians, &c. may, but are not compellable to, grant such relief, and may require the pensioner applying for or receiving the same to assign to them respectively his next quarterly payment of pension, or other allowance, to the intent that such guardians, &c. may receive the same, and retain for the use of the union or parish so much thereof as shall have been by them respectively advanced for the temporary relief of such pensioner, or of his wife or family residing with him in such union or parish. Every such assignment is exempted from stamp duty, and is directed, as to Chelsea pensioners, to be in the form in the schedule to the act marked (D), and as to Greenwich out-pensions, in the form in the schedule marked (E), and as to all other pensions and allowances payable by her Majesty's Paymaster General, in the form in the schedule marked (E E). Every assignment must be certified by the chairman and clerk of the union at some meeting of the board of guardians, or by a churchwarden or overseer of such parish, and be attested by a justice of the peace; and be transmitted within seven days after the same shall have been executed, and at least one month before the payment thereon shall become due, under cover addressed, as to Chelsea Hospital pensions, to the secretary of Chelsea Hospital, with the words, "Chelsea Pensioner," written thereon; and with respect to naval pensions, to the Paymaster-General, Out-pension Office, Tower Hill, with the words, "Greenwich Out-pension," written thereon; and as to all other pensions, to the Paymaster-General, Whitehall, London; who shall thereupon respectively cause the payment thereof

to be made to the guardians, churchwardens, or overseers, who are authorized to retain thereout, for the use of the union or parish, so much as shall have been advanced and paid on security thereof. The guardians, &c. are required to keep an account in writing of the sums so advanced, and also, immediately upon the receipt of the pension, to pay the residue (if any) to the pensioner. If any question shall arise between the pensioner and the guardians, &c. touching the amount due and payable to them respectively, the same shall be determined in a summary way by one justice, and his order and determination therein shall be final and conclusive. But no such assignment shall entitle the said guardians, &c. to receive the pension or allowance, if the assignment shall not have been transmitted within seven days after the same shall have been executed, where the party assigning the same shall die before the time when such pension becomes payable; and all assignments not made in conformity with the provisions of the act are declared to be null and void.

The following are the forms referred to by the above sections of the act.

SCHEDULE (D).

1. *Assignment of Pension payable by Chelsea Hospital.*

I [*naming the pensioner, and the regiment from which he was discharged*] do hereby assign to the guardians of the union or parish of — [or, *as the case may be*, "the churchwardens and overseers of the poor of the parish of —,"] in which union [or "parish"] I am now residing, the next payment of my pension at the rate of — per diem, granted to me as —, and payable from —, in order to secure to the said union [or "parish"] of — the repayment of the sum of — advanced to me by such guardians [or "churchwardens and overseers," *as the case may be*,] out of the funds of the said union [or "parish"].

—, Pensioner.

Signed by the above named — before me, one of her Majesty's justices of the peace for —, this — day of —.

—, Justice.

We do hereby certify the above assignment to be made pursuant to act 2 & 3 Vict. cap. 51, intituled [*stating the title of the act*,] and to be for relief given out of the funds of the said union [or "parish"] on the — day of —, at a meeting of the board of the said guardians.

A. A., Chairman.

A. B., Clerk.

Or C. D., the Churchwarden, and

D. E., the Overseer of —.

SCHEDULE (E).

2. *Assignment of a Greenwich Out-pension.*

I [*naming the pensioner*] do hereby assign to the guardians of the union or parish of

— [or, as the case may be, “ the churchwardens and overseers of the poor of the parish of —”] in which union [or “ parish”] I am now residing the next payment of my Greenwich out-pension, at the rate of — per annum, granted to me as —, and payable from —, in order to secure to the said union [or “ parish”] of — the repayment of the sum of —, advanced to me by such guardians [or “ churchwardens and overseers,” as the case may be,] out of the funds of the said union [or “ parish”].

—, Pensioner.

Signed by the above named — before me, one of her Majesty’s justices of the peace for — this — day of —.

—, Justice.

We do hereby certify, &c. [as in form No. 1.]

SCHEDULE (E E).

3. *Assignment of any other Pension.*

I [naming the person] do hereby assign to the guardians of the union [or “ parish”] of — [or, as the case may be, “ the churchwardens and overseers of the poor of the parish of —”] in which union [or “ parish”] I am now residing, the next payment of my — [here state whether for pension or allowances in civil or military service, not as Chelsea or Greenwich out-pensioner] at — per annum, and payable from —, in order to secure to the said union [or “ parish”] of — the repayment of the sum of — advanced to me by such guardians [or “ churchwardens and overseers,” as the case may be,] out of the funds of the said union [or “ parish”].

—, Pensioner.

Signed, &c. [as in form No. 1.]

6. *Relief to Prisoners for Debt.*

When ordered by a Justice.—By 52 Geo. 3, c. 160, s. 1, any justice acting for the county or division wherein any gaol (which is not a county gaol) is situated, may relieve any poor person confined in such gaol under mesne process for debt, and who shall appear to the justice to be unable to support himself, and who shall have applied for relief to the overseers; which relief (by *sect. 2*) shall not exceed sixpence *per diem*.

Inquiry as to Prisoner’s Settlement.—By *sect. 3*, if the overseers, to whom application for relief is made, shall doubt about the settlement of such poor person, they may cause him to be examined on oath before a justice, upon which examination two justices may make an order for his removal to the place of his last legal settlement, and suspend the execution of such order during the prisoner’s confinement under such mesne process; which suspension shall be indorsed on the order and signed by the justices, or by any other two justices acting for the county or division. A copy of the order of removal must (by *sect. 4*) be served upon the overseers of the parish, in which the prisoner shall be adjudged to be legally settled.

Repayment of Costs of Maintenance.—By *sect. 5*, any justice may direct the overseers of such last mentioned parish to repay to the overseers of the parish wherein the gaol is situated, all the charges proved upon oath to have been incurred in granting relief to the prisoner, not exceeding sixpence *per diem*. In default of payment within twenty-one days after demand, without giving notice of appeal, one justice may order the amount to be levied by distress, with costs not exceeding 40s. If the place to which the removal is ordered to be made be without the jurisdiction of the justice, the warrant may be transmitted to any justice having jurisdiction there, who is required to indorse the same for execution. If the sum ordered to be paid for such relief exceeds 5*l.*, the party aggrieved may appeal to the next quarter sessions of the county in which the gaol is situated, as may be done against any other order of removal.

Appeal.—By *sect. 6*, the appeal is directed to be to the next sessions holden after the service of the copy of the order of removal, in case it be served twenty-one days before the sessions,—but if not, then to the next succeeding sessions.

When no Settlement.—By *sect. 7*, if the prisoner has no settlement in England or Wales, then the amount of the money advanced by the overseers for his relief is to be reimbursed to them out of the county rate, at the expiration of the prisoner's confinement.

7. *Of Casual Poor.*

How to be relieved.—Where a person in need has no settlement, or it cannot be immediately discovered, he must be relieved by the parish where he happens to be at the time of his want or his distress; for it is contrary to the humane spirit of the English law, that any individual should be permitted to perish from starvation, or the want of medical assistance. Whoever therefore is in utter destitution from illness, or from want, it is the bounden duty of the overseer, or relieving officer of the parish in which the pauper is found, to afford him instantly such relief as may be necessary, without waiting for an order from a justice for that purpose; and this, whether the pauper has gained a settlement in the parish, or not. This obligation was clearly imposed upon overseers and guardians before (*d*) the passing of the recent statute for the amendment of the poor laws (4 & 5 Will. 4, c. 76,) and is also expressly recognized by the 54th

(*d*) See 22 Geo. 3, c. 83, s. 38; 33 Geo. 3, c. 35, s. 3; 59 Geo. 3, c. 12, s. 1.

section of that statute; which directs the overseer, in cases of *sudden and urgent necessity*, to give such temporary relief as each case shall require, in articles of absolute necessity, whether the applicant for relief be settled in the parish where he shall apply for relief, or not. The section goes on to provide, that if the overseer refuse relief to such an applicant, a justice may order him to afford it; and that if he disobeys such order, he will be liable to a penalty of 5*l.* But it is right that overseers should know, that they incur a much more serious responsibility, if they obstinately refuse relief in a case of *urgent necessity*, after full knowledge of the facts; for if a poor object should die from the want of such necessary relief, the overseer would be liable to be indicted for a misdemeanor, and severely punished for his obduracy (*e*); and it might be questionable, under some circumstances, whether the offence would not amount to manslaughter.

Provision under 22 Geo. 3, c. 83.—Where guardians have been appointed under the 22 Geo. 3, c. 83, it is provided by the 38th section of that statute, that if any poor person shall be retarded in his passage through any parish in which he has no legal settlement, by reason of his *meeting with any accident, or being afflicted with any dangerous illness or bodily infirmity, without the means of subsistence or of proceeding to the place of his settlement*, the guardian living near the place where such distressed object shall be is required, upon notice thereof, forthwith to provide lodging and suitable nourishment and assistance (and also clothing, if necessary,) for such person, until he can be removed with safety. When he shall be in a state of health fit to be removed, he may be examined before two neighbouring justices as to the place of his settlement, who may make an order for his removal thither; and the parish officer, who shall receive and provide for such person, shall make a charge of the expenses attending the same, which, on being allowed by the justices, are to be paid by the guardian of the parish where the pauper shall be settled, and in default of payment may be levied by distress. If any poor and sick person shall die before he can be so examined, or if any poor person shall be found dead in any parish to which he did not belong, the guardian of such parish is required to cause him to be buried in that parish, and shall make a charge in like manner of the expences, which, on being allowed by one justice, shall be paid by the guardian of the parish where the pauper shall appear to have

(*e*) *R. v. Booth*, Russ. & Ry. C. C. R. 47, note; *R. v. Warren*, id. 48.

been settled, if within that county; but in case the settlement of such poor person cannot be discovered, or shall not be within that county, the same shall be paid by the treasurer of the county out of the county rate.

Cases of Accident and sudden Illness.—But whether a parish has guardians, or not, it may now be considered as a general principle, that where a poor person meets with an accident, or is suddenly afflicted with a dangerous illness in any parish, there is a legal and moral obligation upon the overseers of that parish to afford him the necessary relief. If he was merely in the parish for a temporary purpose, and has not come to settle or inhabit there, he is comprehended within the class of persons called “Casual Poor,” and the expenses of relieving him must be borne by that parish (*f*); but if he was residing in the parish, and is legally settled in another, then, although an order may be made for his removal, yet the execution of it must be suspended until the pauper can be removed with safety, and the parish where he is legally settled must in that case indemnify the parish that has relieved him. In all cases, however, of serious accident, as that of a broken limb, or a dangerous wound, the sufferer should be taken to the nearest and most convenient house where assistance can be procured; and the officer of the parish where the accident happened cannot get rid of the obligation to afford the necessary relief, by removing the sufferer to a house in an adjoining parish, or even to his own home in the parish where he is legally settled (*g*). It may so happen, however, that the nearest place where assistance can be obtained is in a different parish from that in which the accident happened. In this case, the pauper must be considered as casual poor in the parish to which he is so taken, and which consequently becomes liable for the expenses of his cure; for the pauper, under these circumstances, has a claim to have his necessities provided for in that parish, where his infirm and indigent body may be found, and there is no exclusive liability attaching to the parish where the accident happened (*h*); although, as we have already seen, the overseers of such last mentioned parish cannot shift their responsibility by refusing an asylum to the pauper, or improperly removing him into another parish.

(*f*) *R. v. St. James in Bury St. Ed-* 738.
munds, 10 East, 25.

(*g*) *Tomlinson v. Bentul*, 5 B. & C.

(*h*) *Lamb v. Bunce*, 4 M. & S. 725;
R. v. St. Lawrence, 4 B. & Ald. 660.

II. OF RELIEF TO PAUPERS IN THE WORKHOUSE.

1. <i>Of Unions and Incorporated Districts</i>	729	<i>duct of the Officers attached to them</i>	731
2. <i>Of the Erection and Establishment of Workhouses, and herein of their Government, and the Con-</i>		3. <i>Of the Admission of Paupers into the Workhouse, and of their treatment and conduct</i>	750
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1. *Of Unions and Incorporated Districts.*

How formed.—By the 9 Geo. 1, c. 7, s. 4, parishes and townships were first permitted to unite, for the purpose of having a workhouse in common, and maintaining and employing their poor: and, by the 22 Geo. 3, c. 83, parishes and townships might also unite for the same purpose, if two-thirds in number and value of the owners or occupiers of lands, &c. within the respective parishes should think fit, and two justices of the peace should approve of the union. By these acts the union could only be effected with the consent of the parishioners and inhabitants.

But by the 4 & 5 Will. 4, c. 76, s. 26, such union may now take place, without any such consent; the Poor Law Commissioners being empowered by order under their hands and seal to declare so many parishes as they shall think fit to be united; and thereupon the workhouses of such parishes shall be for their common use; and the Commissioners may issue orders for the classification of the poor in such workhouses; but each parish is separately chargeable with the expense of its own poor, whether relieved in or out of the workhouse.

By *sect. 37*, also, no union under the former stat. of 22 Geo. 3, c. 83, can now be formed, without the previous consent of the Commissioners. This restriction, therefore, coupled with the previous power given to the Commissioners to unite any parishes they choose, will have the effect of superseding all the powers given by the former acts to parishes to unite themselves. And although a parish has a local act for managing its poor, the Commissioners may nevertheless include it in any union, without the consent of the guardians or trustees (*i*).

How Expenses to be contributed.—By *sect. 28*, the Commissioners are directed to ascertain the expense incurred by each parish, for the three years ending on the 25th March next preceding such inquiry, and thereupon to calculate the annual average expense of

each parish for that period, and the several parishes are to contribute to the common fund in the like proportions as on such annual average of three years such relief had cost each parish separately. And by *sect. 29*, the like provision is made with respect to unions under the 22 Geo. 3, c. 83, or any local acts.

By *sect. 30*, the parliamentary returns of the sums expended for the relief of the poor of any parish are to be evidence of the actual expense of the poor in each parish.

How dissolved and altered.—By *sect. 32*, the Commissioners may declare any union, whether formed before or after the act (except when united for the purposes of settlement or rating) to be dissolved, or any parish to be separated from or added to the union, and thereupon make such rules as may be adapted to its altered state. But no such dissolution, alteration, or addition shall take place, without the consent of a majority of two-thirds of the guardians.

Where considered as one Parish.—By *sect. 33*, the guardians of any union may, subject to the approbation of the Commissioners, agree that for the purposes of settlement the union shall be considered as one parish; in which case the agreement, after being signed by the guardians and signed and sealed by the Commissioners, must be deposited with the clerk of the peace; and the expense of maintaining the poor, and of ascertaining or litigating the settlement of any poor person in any of the parishes of the union, shall form part of the general expenses, and be paid out of the common funds.

And by *sect. 34*, where the parishes of any union shall be situate within the same county, and under the jurisdiction of the same justices, the guardians may in like manner agree, with the approbation of the Commissioners, that for the purpose of rating the union shall be considered one parish; in which case the agreement must be in like manner signed by the guardians, and signed and sealed by the Commissioners, and deposited with the clerk of the peace: after which, the guardians must, under the regulations of the Commissioners, ascertain and assess the value of the property in the several parishes of the union rateable to the relief of the poor; and all rates grounded on such assessment are to be made, allowed, published and recovered in the same manner as poor rates.

By *sect. 36*, after any such common rate shall have come into operation, the proportions of contribution fixed at the period of uniting the parishes shall wholly cease; and all expenditure in respect of the poor, or chargeable in any way on the poor rates of

the respective parishes, shall be paid out of the common fund raised under such common rate. But in case any parish of the union, at the period of entering into any such agreement for the purpose of settlement or rating, shall not be represented by a guardian elected solely by such parish, the parish shall not be bound by any such agreement, unless a majority of the owners of property and rate-payers shall in writing testify their assent to such agreement.

Officers of the Union to account.—By *sect. 47*, every overseer, treasurer, or other person having the collection, receipt, or distribution of the monies assessed for the relief of the poor in any parish or union, or holding or accountable for any balance or sum of money, or any books, deeds, papers, goods, or chattels relating to the relief of the poor, or the collection or distribution of the poor rate of any parish or union, shall once in every quarter, in addition to the annual account now by law required,—and where the rules of the Commissioners shall have come in force, then as often as their rules shall direct, but not less than once in every quarter,—make and render to the guardian, auditors, or such other persons as may be appointed to audit such accounts,—or, in default of any such guardian, auditor or other person being so appointed, then to the justices of the peace at their petty sessions for the division in which such parish or union shall be situate,—a full and distinct account in writing of all monies matters and things committed to their charge, or received, held, or expended by them on behalf of any such parish or union; and, if thereunto required by the justices, guardians, auditors or other persons authorized in that behalf, shall verify on oath the truth of all such accounts from time to time respectively, or subscribe a declaration to the truth thereof, in manner and under the penalties in the act provided for parties giving false evidence, or refusing to give evidence; and all balances due from any guardian, treasurer, overseer or assistant overseer, or other person having the control and distribution of the poor rate, or accountable for such balances, may be recovered in the same manner as any penalties and forfeitures are recoverable under the act. But no such proceeding shall exonerate or discharge the liability of the surety of any such treasurer or overseer, or other person as aforesaid.

2. *Of Workhouses (j).*

Under the statute of 43 Eliz. c. 2, it is the duty of the overseers to

(j) If any alteration is made during law relating to workhouses, it will be the present session of parliament in the noticed in the Appendix.

provide work for the able-bodied poor who are out of employment (*k*), and relief for the sick and impotent who are unable to work. The difficulty that was often experienced by overseers in finding persons who were willing to employ the poor gave rise to the establishment of workhouses, in which the poor might be set to work and maintained, under the control and inspection of the officers of that parish which was bound to support them. It was observed by Lord Mansfield, in a case relating to this subject (*l*), that workhouses, if well regulated, were a most desirable mode of relief for the poor, supplying comfort and accommodation for those who cannot work, and employment for those who can. And he adds, that in many instances which had fallen under his knowledge, particularly on the Midland Circuit, they had reduced the annual amount of the poor rates one half. The policy of the legislature seems now to be, and the rules of the Poor Law Commissioners are in accordance with that policy, to encourage industry, by holding out the disgrace of going into the workhouse; and it has been said, that if parents could obtain a maintenance for their children, without being compellable to go into the workhouse, idleness would be thereby promoted among artificers and manufacturers. On the contrary, it may be urged that it would be extremely hard, if, where all the children of a family, except one, were capable of supporting themselves, and that one was unable to maintain itself and was under the necessity of receiving relief, the whole family were to be sent to the workhouse. But we have only to deal with the law on this subject, which may be thus arranged:—

1. <i>Building, purchasing, or otherwise procuring Workhouses</i>	732	3. <i>Rules for the Government of Workhouses, and herein of Visitors</i> ..	737
2. <i>Appointment of Officers relating to them</i>	735	4. <i>Misconduct of the Officers</i>	746
		5. <i>Persons contracting to supply Provisions, &c.</i>	748

1. *Building, purchasing, or otherwise procuring them.*

By 9 Geo. 1, c. 7, s. 4, a parish was first enabled to purchase or hire a house for the maintenance and employment of its poor; and when any parish was too small to do so, two or more parishes might unite for that purpose, and the parish officers might contract with persons for the maintenance and labour of their poor.

The 22 Geo. 3, c. 83 introduced many improvements in the management of the poor in workhouses, and, as we have already seen,

(*k*) *R. v. Collett*, 2 B. & C. 324.

(*l*) *R. v. St. Peter and St. Paul*, Cald. 213.

allowed parishes also to unite in having a common workhouse; but no such union can now be formed, without the consent of the Poor Law Commissioners (*m*); who may order such parishes to be united as they may think fit (*n*). By the recent act of 4 & 5 Will. 4, c. 76, s. 21, the powers and authorities under the former acts relating to workhouses may be exercised by the persons to whom they are therein given, but under the control, and subject to the rules, orders and regulations of the Poor Law Commissioners.

By 22 Geo. 3, c. 83, s. 1, so much of the 9 Geo. 1, c. 7 was repealed, as related to the maintaining or hiring out the labour of the poor by contract.

By *sect. 17*, the guardians of the several parishes united were to provide a suitable house for the maintenance of the poor, and proper utensils and materials for their employment. By *sect. 18*, the houses so provided were to be situate within one of the united parishes, and not in any other parish, except with the consent of three-fourths of the owners and occupiers of property.

By *sect. 19*, all the houses hired or rented for this purpose were to be for such term, &c. as specified in the form of agreement contained in the schedule to the act, and to be free from all parliamentary and parochial rates and taxes, except those assessed when the houses were first taken.

By *sect. 27*, where any poorhouse was provided or agreed to be erected, the guardians might inclose from any waste or common land lying near thereto, with the consent of the lord of the manor, and the major part in value of the commoners, any portion not exceeding ten acres, for the purpose of building upon, or occupying, cultivating, and improving the same, for the use of the poorhouse.

By 59 Geo. 3, c. 12, s. 8, the churchwardens and overseers of any parish not having a workhouse, or where the workhouse is insufficient, may, by direction of the inhabitants in vestry assembled, erect a suitable workhouse, or enlarge any one existing, and purchase or take on lease any ground for that purpose. And by *sect. 10*, where no sufficient workhouse can be procured in the parish, the adjoining parish may be resorted to. In this last case, it seems that a workhouse situate in another parish is, for the purposes of settlement, to be considered as part of that parish whose poor reside therein (*o*). And by 4 & 5 Will. 4, c. 76, s. 44, every workhouse is declared to

(*m*) 4 & 5 Will. 4, c. 76, s. 37.

(*n*) *Id.* s. 26.

(*o*) *R. v. St. Peter, Cald.* 213.

be subject to the local jurisdiction of any city or borough to which it belongs, though it may be situate in such part of a parish as may not be within the liberties of the city or borough.

By 59 Geo. 3, c. 12, s. 17, the churchwardens and overseers may take and sue, as corporate bodies, in relation to all buildings and lands belonging to the parish. In order to constitute the body corporate intended by this act, there must be two overseers *and* a churchwarden (*p*). Neither the churchwardens, nor the overseers *alone*, can sue as a corporate body, under the provisions of the act (*q*).

By 22 Geo. 3, c. 83, s. 20, the visitor and guardians of the poor of any parish adopting the provisions of that act may borrow money at interest, to defray the expense of building and preparing the workhouse, and secure such money by a charge upon the poor rate; one-twentieth part of which loan is (by 43 Geo. 3, c. 110, s. 2) directed to be paid off every year.

Rate for Building.—By 59 Geo. 3, c. 12, s. 14, no sum exceeding a rate of 1s. in the pound, shall be raised in any one year for the expenses of any building, &c. unless two-third parts of the inhabitants and occupiers shall give their consent. And by *sect.* 15, where such consent is given, the churchwardens and overseers may, with the consent of the majority of the rate payers in vestry assembled, raise any additional sum by loan or annuity, and charge the future rates with the re-payment of the principal and interest. By *sect.* 16, no greater assessment than 1s. in the pound shall be charged on future rates, unless with the consent of two-thirds of the proprietors of houses and lands.

Powers of Sale and Exchange.—By 22 Geo. 3, c. 83, s. 43, poor-houses may be sold by the guardians, with the approbation of the rate payers at a public meeting, and the proceeds applied for the purposes of the act.

But all the powers and authorities given by the above mentioned acts must now (by the 4 & 5 Will. 4, c. 76, s. 21) be exercised under the control, and subject to the rules, orders and regulations of the Poor Law Commissioners.

By 4 & 5 Will. 4, c. 76, s. 63, the money requisite for providing a workhouse, or promoting emigration, may be borrowed by the overseers or guardians, with the consent of the Poor Law Commissioners, from the Commissioners of Exchequer Bills.

(*p*) *Woodcock v. Gibson*, 4 B. & C. 462. (*q*) *Id.*; *Phillips v. Pearce*, 5 B. & C. 433.

And by 5 & 6 Will. 4, c. 69, s. 3, the guardians of any parish or union, or the overseers of a parish where there are no guardians, may, with the approbation of the Poor Law Commissioners, sell, exchange, let, or otherwise dispose of any workhouses, or other property belonging to any parish or union, and apply the proceeds, rents or profits towards the purchase or building of any workhouses, or for the permanent advantage of the parish or union, as the Poor Law Commissioners may approve. The Commissioners may direct the mode and proportions, in which any money required for the purchase of any such property shall be raised, paid and secured. But no such sale, or exchange, or letting shall take place, except with the consent of a majority of the rate payers of the parish, and of the owners of property entitled to vote under the provisions of the 4 & 5 Will. 4, c. 76.

2. *Appointment of Officers, &c. of Workhouses.*

By 22 Geo. 3, c. 83, s. 10, the guardians were to nominate three proper persons for the office of visitor of the workhouse, and two justices were to appoint one of such persons to fill the office. But now, by 4 & 5 Will. 4, c. 76, s. 41, all elections of visitors and other officers are directed to be made and conducted, so far as the Commissioners should direct, according to the provisions of that act. And by article 56 of the last General Orders of the Poor Law Commissioners for the government of workhouses (*r*), the guardians are directed to appoint a visiting committee from their own body, whose duty it is to examine the workhouse once in every week at the least, to inspect the last reports of the chaplain and medical officer for the workhouse, examine the stores, and ascertain the truth and circumstances of any complaints that may be made to them. They are also to write such answers as the facts may warrant to certain queries printed in a book, entitled the visitor's book, which are to be submitted regularly to the board of guardians at their ordinary meeting.

By *art.* 60, also, the board of guardians are to appoint the following officers and servants, with such assistants as may be deemed necessary, viz. a *master* and *matron* of the workhouse, a *chaplain*, a *schoolmaster* and *schoolmistress*, a *medical officer*, and a *porter*, whose respective duties are all specifically defined by the subsequent rules of the Commissioners; and by *art.* 67, the board of guardians

(*r*) These Orders were made on the 5th February, 1842.

are to pay them such salaries as the Commissioners shall direct or approve.

By 4 & 5 Will. 4, c. 76, s. 48, the master of any workhouse, or other paid officer of any parish or union, is removable by the Commissioners (s).

The appointment of every officer is required (by *art. 62* of the new General Order of the Poor Law Commissioners) to be reported to the Commissioners by the clerk to the guardians; and by *art. 63*, no such appointment can be made, unless previous notice has been given at one of the two ordinary meetings of the board next preceding the meeting at which the appointment is to be made, or unless an advertisement giving notice of such appointment shall have appeared in some public paper, by the direction of the guardians, at least seven days before the day of the appointment.

By *art. 65*, no person is to be appointed to any office, except that of chaplain or medical officer, who will not agree to give one month's notice previous to resigning the office, or to forfeit one month's amount of salary.

By *art. 68*, every officer, except the medical officer, shall hold his office until he shall die, resign, or be removed by the Commissioners; but any porter, assistant, or secretary may be dismissed by the board of guardians, without the consent of the Commissioners, such dismissal and the grounds thereof being reported to them.

The board of guardians, however, may (by *art. 69*) at their discre-

(s) By 22 Geo. 3, c. 83, s. 12, the guardians were to recommend to the justices one of their own body to be *treasurer* of the workhouse; and two justices might appoint the guardian so recommended, or any other guardian whom they should think better qualified. The treasurer was to be allowed such annual sum, not exceeding 10*l.*, as the visitor, if not a guardian, should think fit,—and if no such visitor, as two justices for the limit should appoint. And by 41 Geo. 3, c. 9, s. 3, two justices might, by application from two-thirds in number and value of the owners and occupiers of lands in any parish, appoint a treasurer with the same salary for the workhouse of the parish.

But the election of the *treasurer*, like that of all other officers of the workhouse, must now be made and conducted under

such directions as may be given by the Commissioners.

By 22 Geo. 3, c. 83, s. 9, two justices might appoint the *governor* of the workhouse of any parish or union; and the visitor, with the consent of the guardians, or two justices, where a guardian should be visitor, might remove him, upon proof of misbehaviour or incapacity. And by 50 Geo. 3, c. 50, s. 3, the justices in petty sessions might also appoint the *keeper* of the workhouse of any parish to be the governor.

By 22 Geo. 3, c. 83, s. 14, all the above offices were to determine in Easter week next after the appointment, when the persons who had a right to recommend another person to the justices were either to agree with the party to continue in the office, or to proceed to recommend another.

tion, suspend any of the officers, and forthwith report such suspension, together with the cause thereof, to the Commissioners.

By *art. 70*, if any officer or servant be prevented by sickness or accident, or other sufficient reason, from the performance of his duties, the guardians may appoint a temporary substitute, and pay him a reasonable compensation for his services, reporting such appointment to the Commissioners.

By *art. 71*, when any officer shall die or resign, the guardians are to give notice to the Commissioners, and proceed to make a new appointment.

By *art. 72*, the salary of any officer is to be payable up to the day on which he ceases to hold it, and no longer.

3. *Rules for the Government of Workhouses.*

By 22 Geo. 3, c. 83, s. 34, certain rules (specified and contained in the schedule to the act) were directed to be observed and enforced at every workhouse provided under that act, with such additions as should be made by the justices at some special session. And by 49 Geo. 3, c. 124, s. 5, two justices, at any petty sessions, might direct such rules to be observed in any other parish.

By 50 Geo. 3, c. 50, s. 1, two justices, at any special session, might direct these rules to be observed in workhouses, with such additions as should be made by the justices, although there should be no master or mistress of the workhouse, and might also alter such rules. And by *sect. 5*, any breach of these rules was to be punished in such manner as was directed for the breach of the rules under the 22 Geo. 3, c. 83.

But now, by 4 & 5 Will. 4, c. 76, s. 22, no additions or alterations can be made to or in the rules contained in the schedule of the 22 Geo. 3, c. 83, nor any rules be made under the authority of that act, or any local or other act relating to poorhouses, workhouses, or the relief of the poor, until the same shall have been submitted to and approved and confirmed by the Poor Law Commissioners; but when so confirmed, they are declared to be legally valid and binding upon all persons, and no justices have power to repeal the same.

And by *sect. 42*, the Commissioners may make rules, orders and regulations to be observed and enforced at every workhouse, for the government thereof, and the nature and amount of the relief and the labour to be exacted from the persons relieved, and the preservation therein of good order, and may from time to time alter those rules, or any rules made under the 22 Geo. 3, c. 83; provided that if any such

rule affects more than one union, it is to be considered as a general rule, and subject to all the provisions respecting general rules (*s*).

Penalty on persons introducing Spirituous Liquors.—By sect. 92, if any person shall carry, bring, or introduce into any workhouse any spirituous or fermented liquor, without the order in writing of the master of the workhouse, or any officer acting under his direction, the master or any officer may apprehend the offender, and carry him before a justice, who is empowered to hear and determine the offence in a summary way, and upon conviction, the offender shall forfeit not exceeding 10*l.* for every such offence; in default of payment of which the justice is required to commit him to the common gaol or house of correction for the district in which the workhouse is situate, not exceeding two calendar months, unless the penalty shall be sooner paid.

Duties of the Master.—By article 74 of the new general orders (*t*) issued by the Poor Law Commissioners for the government of workhouses, the following are declared to be the duties of the master of the workhouse :

1. To admit paupers into the workhouse, in obedience to the orders specified in article 1 (*u*), and also every person who shall appear to him to require relief through any sudden or urgent necessity, and to cause every pauper upon admission to be examined by the medical officer, as is directed in article 4 (*v*).

2. To cause every male pauper above the age of seven years upon admission to be searched, cleansed, and clothed, and to be placed in the ward appropriated to the class to which he appears to belong.

3. To enforce industry, order, punctuality, and cleanliness, and the observance of the several regulations therein contained, by the paupers in the workhouse, and by the several officers, assistants, and servants therein employed.

4. In the absence of the chaplain to read prayers, as is prescribed in article 31, or to cause them to be read.

5. To call over the names of the male paupers, according to the direction contained in article 14, to inspect their persons and see that each individual is clean.

6. To provide for and enforce the employment of the able-bodied paupers during the whole of the hours of labour; to assist the school-

(*s*) As to the operation of General Rules, see *ante*, p. 676.

February, 1842.

(*u*) See *post*, p. 752.

(*t*) These orders were made on the 5th

(*v*) See *post*, p. 753.

master in training the youth in such employment as will best fit them for service; and to keep the partially disabled paupers occupied to the extent of their ability.

7. To visit the sleeping wards of the male paupers at eleven o'clock in the morning of every day, and see that such wards have been all duly cleansed and ventilated.

8. To see that the meals of the paupers are duly provided, dressed and served, according to the directions in article 18, and to superintend the distribution of the food.

9. To say or cause to be said grace before and after meals.

10. To see that the dining-hall, tables, and seats are cleansed after every meal.

11. To visit all the wards of the male paupers before nine o'clock every night in winter, and ten o'clock in summer, and see that all the male paupers are in bed, and that all fires and lights are extinguished.

12. To receive from the porter the keys of the workhouse at nine o'clock every night, and to deliver them to him again at six o'clock every morning, or at such hours as shall from time to time be fixed by the board of guardians and approved of by the Poor Law Commissioners.

13. To see that the male paupers are properly clothed, and that their clothes are kept in proper repair.

14. To send for the medical officer of the workhouse, in case any pauper is taken ill or becomes insane, and to take care that all sick and insane paupers are duly visited by the medical officer, and are provided with such medicines and attendance, diet, and other necessities, as the medical officer or the guardians shall in writing direct, and to apprise the nearest relation in the workhouse of the sickness of any pauper; and, in the case of dangerous sickness, to send for the chaplain, and any relative or friend of the pauper resident within a reasonable distance whom the pauper may desire to see.

15. To cause the birth of every child born in the workhouse to be registered within the space of one week after such child shall have been born, and to give immediate information of the death of any pauper in the workhouse to the medical officer, and to the nearest relations of the deceased who may be known to him, and who may reside within a reasonable distance; and if the body be not removed within a reasonable time, to provide for the interment thereof, and, when requisite, to cause such death to be registered within the space of five days after the day of such death.

16. To deliver an inventory of the clothes and other property of any pauper who may have died in the workhouse to the guardians, at their next ordinary meeting, and to dispose thereof according to their directions.

17. To keep all books of accounts which he is, or hereafter may be, by any order under the hands and seal of the Poor Law Commissioners, directed and required to keep; to allow the same to be constantly open to the inspection of any of the guardians of the union, and to submit the same to the guardians at their meetings.

18. To submit to the guardians at every ordinary meeting an estimate of such provisions and other articles as are required for the use of the workhouse, and to receive and execute the directions of the guardians thereupon.

19. To receive all provisions and other articles purchased or procured for the use of the workhouse, and before placing them in store, to weigh the same and examine and compare them with the bills of parcels or invoices severally relating thereto; and, after having proved the accuracy of such bills or invoices, to authenticate the same with his signature, and submit them to the guardians at their next ordinary meeting.

20. To receive and take charge of all provisions, clothing, linen and other articles belonging to the workhouse or confided to his care by the board of guardians, and issue the same to the matron or other persons as may be required; and such articles shall be applied to such purposes as shall be authorized or approved of by the board of guardians, and to no other.

21. To read over to the paupers such of the regulations herein contained, and at such times, as the board of guardians shall direct.

22. To report to the board of guardians, from time to time, the names of such children as the schoolmaster may recommend as fit to be put out to service or other employment, and to take the necessary steps for carrying into effect the directions of the board of guardians thereon.

23. To keep a book to be called "The Master's Journal;" to enter therein every important occurrence in the workhouse, other than those entered in the book required by article 50 to be kept, and to cause such book to be laid before the guardians at every ordinary meeting.

24. To take care that the wards, rooms, larder, kitchen and all other offices of the workhouse, and all the utensils and furniture thereof, be kept clean and in good order; and as often as any defect

in the same, or in the state of the workhouse shall occur, to report the same in his journal to the guardians at their next ordinary meeting.

25. To inform the visiting committee and the board of guardians of the state of the workhouse in every department; and especially to make a report of the number of inmates in the workhouse in the form therein prescribed, and to report in his journal to the guardians, at their next ordinary meeting, any negligence or other misconduct on the part of any of the subordinate officers or servants of the establishment; to offer suggestions to the board of guardians for the correction of abuses and the introduction of improvements in the management of the workhouse; and generally to observe and fulfil all lawful orders and directions of the board of guardians suitable to his office.

26. The master shall not purchase or procure any articles for the use of the workhouse, nor order any alterations or repairs of any part of the premises, or of the furniture or other articles belonging thereto, nor pay any monies on account of the workhouse or of the union, without the order of the board of guardians.

Matron.—By article 75, the following are declared to be the duties of the matron of the workhouse:

1. In the absence of the master, or during his inability to act, to admit paupers into the workhouse in obedience to the orders specified in article 1 (*w*), and also every person who shall appear to her to require relief through any sudden or urgent necessity, and to cause every pauper upon such admission to be examined by the medical officer as is directed in article 4 (*x*).

2. To cause the pauper children under the age of seven years, and the female paupers, to be searched, cleansed and clothed upon their admission, and to be placed in the wards appropriated to the classes to which they appear to belong.

3. To provide for and enforce the employment of the able-bodied female paupers during the whole of the hours of labour; and to keep the partially disabled female paupers occupied to the extent of their ability, and to assist the schoolmistress in training up the children so as best to fit them for service.

4. To call over the names of the paupers as is directed in article 14, to inspect their persons, and see that each individual is clean.

5. To visit all the wards of the females and children every night

(*w*) See *post*, p. 752.

(*x*) See *post*, p. 753.

before nine o'clock, and to ascertain that all the paupers in such wards are in bed, and all fires and lights therein extinguished.

6. To pay particular attention to the moral conduct and orderly behaviour of the females and children, and to see that they are clean and decent in their dress and persons. .

7. To superintend and give the necessary directions for making and mending the linen and clothing supplied to the male paupers, and all the clothing supplied to the female paupers and children; and to take care that all such clothing be marked with the name of the union.

8. To see that every pauper in the workhouse has clean linen and stockings once a week, and that all the beds be kept in a clean and wholesome state.

9. To take charge of the linen and stockings for the use of the paupers, and the other linen in use in the workhouse, and to apply the same to such purposes as shall be authorized or approved of by the board of guardians, and to no other.

10. To superintend and give the necessary directions concerning the washing, drying, and getting up of the linen, stockings and blankets, and to see that the same be not dried in the sleeping wards or in the sick wards.

11. To take care, with the assistance of the nurses, of the children and sick paupers; and to provide the proper diet for the children and the sick paupers, and to furnish them with such changes of clothes and linen as may be necessary.

12. To assist the master in the general management and superintendence of the workhouse, and especially in —

Enforcing the observance of good order, cleanliness, punctuality, industry, and decency of demeanor among the paupers;

Cleansing and ventilating the sleeping wards and the dining hall, and all other parts of the premises;

Placing in store and taking charge of the provisions, clothing, linen, and other articles belonging to the union.

13. To report to the master any negligence or other misconduct on the part of any of the subordinate female officers or servants of the establishment.

14. And generally to observe and fulfil all lawful orders and directions of the board of guardians, suitable to her office.

Chaplain.].—By *art.* 66, no person can hold the office of chaplain, without the consent of the bishop of the diocese signified in writing.

And by *art. 76*, the following are declared to be the duties of the chaplain :

1. To read prayers, and preach a sermon to the paupers and other inmates of the workhouse, on every Sunday (unless the guardians, with the consent of the Poor Law Commissioners, shall otherwise direct), and to read prayers to them on every Good Friday and *Christmas Day*.

2. To examine the children, and to catechize such as belong to the Church of England, at least once in every month, and to make a record of the same and state the dates of his attendance, the general progress and condition of the children, and the moral and religious state of the inmates generally, in a book to be kept for that purpose, to be laid before the board of guardians at their next ordinary meeting, and to be termed "*The Chaplain's Report.*"

3. To visit the sick paupers, and to administer religious consolation to them in the workhouse, when applied to for that purpose by the master or matron.

Schoolmaster and Schoolmistress.—By *art. 77*, the following are declared to be the duties of the schoolmaster and schoolmistress :

1. To instruct the boys and girls, according to the directions expressed in article 22 (*y*).

2. To regulate the discipline and organization of the school, and the industrial and moral training of the children, subject to the directions of the board of guardians.

3. To accompany the children when they quit the workhouse for exercise, unless the guardians shall otherwise direct.

4. To keep them clean in their persons, and orderly and decorous in their conduct.

5. To assist the master and matron respectively in maintaining due subordination in the workhouse.

Medical Officer.—By *art. 64*, no person can be a medical officer for the workhouse, who shall not be duly licensed to practise as a medical man.

And by *art. 78*, the following are declared to be his duties :

1. To attend at the workhouse at the times fixed by the board of guardians, and also when sent for by the master, matron or porter of the workhouse in cases of sudden illness, accident or other emergency, and at all such other times as the state of the sick or insane patients within the workhouse may render necessary.

2. To examine the state of the paupers, on their admission into the

workhouse; to examine the state of the patients in the sick wards, and also the state of any sick or insane pauper in the other wards.

3. To give all necessary directions as to the diet, classification and treatment of the sick paupers, and paupers of unsound mind, and to report to the board of guardians any pauper of unsound mind in the workhouse, whom he may deem to be dangerous.

4. To report in writing to the board of guardians any defect in the diet, drainage, ventilation, warmth or other arrangement of the workhouse, or any excess in the number of any class of inmates, which he may deem to be detrimental to the health of the inmates.

5. To give all necessary directions as to the diet of the children, and to vaccinate such of the children as may require vaccination.

6. To make a weekly return to the board of guardians in a book, prepared according to the form therein prescribed, and to insert therein the date of every attendance, and to make an annual index to the same, with the names arranged alphabetically according to another form therein prescribed, and to deliver the same when completed to the guardians.

7. To enter in his weekly return the death of every pauper who shall die in the workhouse, together with the apparent cause thereof.

8. To give to the guardians, when required, any reasonable information respecting the case of any pauper under his care; to make any such written report relative to any sickness prevalent among the paupers in the workhouse, as the board of guardians, or the Poor Law Commissioners, may require of him; and to attend the board of guardians when summoned by them.

Porter.] — By *art. 79*, the following are declared to be the duties of the porter:

1. To keep the gate, and to prevent any person not being an officer of the workhouse or of the union, or an Assistant Commissioner, or any person authorized by law or by the said Commissioners or board of guardians, from entering into or going out of the house, without the leave of the master or matron.

2. To keep a book in which he shall enter the name and business of every officer or other person who shall go into the workhouse, and the name of every officer or other person who shall go out thereof, together with the time of such officers or persons going in or out.

3. To receive all paupers who apply for admission with a proper order as directed in article 1 (*z*), or under circumstances of sudden or urgent necessity, and if the master and matron be both absent, to

place such paupers in the receiving ward until the master or matron return.

4. To examine all parcels and goods before they are received into the workhouse, and prevent the admission of any spirituous or fermented liquors, or other articles contrary to law or to any of the regulations therein contained.

5. To search any pauper entering or leaving the workhouse, whom he may suspect to have possession of any spirits or other prohibited articles, and to require any other person entering the workhouse, whom he may suspect of having possession of any such spirits or prohibited articles, to satisfy him to the contrary before he shall permit such person to be admitted.

6. To examine all parcels taken by any pauper out of the workhouse, and to prevent the undue removal of any article from the premises.

7. To lock all the outer doors, and take the keys to the master at nine o'clock every night, and to receive them back from him every morning at six o'clock, or at such hours as shall from time to time be fixed by the board of guardians, and approved of by the Poor Law Commissioners; and if any application for admission to the workhouse be made after the keys shall have been so taken to the master, to apprise the master forthwith of such application.

8. To assist the master, matron, schoolmaster, and schoolmistress, in preserving order and in enforcing obedience and due subordination in the workhouse.

9. To inform the master of all things affecting the security, order and interest of the workhouse, and to obey all the lawful directions of the master or matron and of the board of guardians suitable to his office.

Visitors.—By 4 & 5 Will. 4, c. 76, s. 43, where any rules are directed by the Commissioners to be observed in any workhouse, any justice of the county may visit, inspect and examine such workhouse, for the purpose of ascertaining whether such rules have been duly observed, as well as for such other purposes as justices are authorized to visit workhouses under the 30 Geo. 3, c. 49. If, in the opinion of such justice, any rule or order has not been duly observed, the justice may summon the party offending before two justices, and upon conviction he is liable to such penalties as are provided for disobedience of the rules of the Commissioners (*a*). Where no rules have been directed by the Commissioners to be observed in

(a) See *sect. 98, ante*, p. 677.

the workhouse of any parish, nothing is to prevent any justice, physician, surgeon, or apothecary, or the officiating clergyman of any parish, from visiting such workhouse, and examining and rectifying the state and condition of the same, as they are authorized to do by the 30 Geo. 3, c. 49.

By the statute just referred to, the persons above specified, being authorized under the warrant of a justice, may visit any parish workhouse and examine into the state and condition of the poor therein, and their food, clothing and bedding, and the state and condition of the house; and, if they find any cause of complaint, may certify the same to the next quarter sessions, and cause the master of the workhouse to be summoned at the same sessions to answer such complaint.

By *sect. 2*, if, upon such visitation, any of the poor are found to be afflicted with any contagious disease, or in want of immediate medical or other assistance, or of sufficient and proper food, or requiring separation or removal from the other poor, two justices may make such order as they shall think fit, and certify their order to the next quarter sessions, which may make any further order on the subject.

By *sect. 3*, this act is not to extend to the workhouse of any district regulated by any special act of parliament. Its enactments also, we have seen, can only come into operation, where no rules have been directed by the Commissioners for the government of the workhouse.

By *art. 56*, however, of the new rules of the Commissioners, the board of guardians are to appoint a visiting committee from their own body, who are to examine the workhouse of the union once a week, at the least.

4. *Misconduct of the Officers.*

Penalty for supplying Goods, &c.—By 55 Geo. 3, c. 137, s. 6, no person having the management of the poor of any parish shall, either in his own name, or in the name of any other, provide, furnish, or supply, for his own profit, any goods, materials or provisions for the use of any workhouse, or otherwise for the support of the poor, nor shall be concerned, directly or indirectly, in furnishing or supplying the same, or in any contract relating thereto, under the penalty of 100*l.*, recoverable with costs by action at law.

And by 4 & 5 Will. 4, c. 76, s. 51, the above enactment is extended and made applicable to every Commissioner, Assistant Commissioner, guardian, treasurer, master of a workhouse, or other

officer appointed under the provisions of the last mentioned act. And, by *sect. 77*, no person appointed in any parish or union to any office concerned in the administration of the poor laws shall furnish or supply, for his own profit, or on his own account, any goods, materials or provisions ordered to be given in parochial relief, or shall supply the same for or in respect of the money ordered to be given in parochial relief to any person; under the penalty of 5*l.*, on conviction before two justices, one half to the informer, and the other half in aid of the poor rates.

Corporal Punishment, &c. prohibited.—By 54 Geo. 3, c. 170, s. 7, it is not lawful for the master, or other person entrusted with the superintendence of any workhouse, or appointed for the control or management of the poor of any district, to use corporal punishment to any adult person, or to confine any person for any offence longer than twenty-four hours, or such further time as may be necessary to carry him before a magistrate. And, by 56 Geo. 3, c. 129, s. 2, every governor, director, guardian or master of any workhouse is prohibited from chaining, or confining by chains or manacles, any poor person of sane mind.

Registering of Paupers.—By 4 & 5 Will. 4, c. 76, s. 55, the master of every workhouse, or such other paid officer of the parish or union as the Commissioners may direct, is required to register in a book kept specially for that purpose, the name of every poor person who shall be in the receipt of relief in the workhouse, together with such other particulars as the Commissioners may direct. And, in like manner, the overseer of every parish must keep a similar register of the name of every poor person in receipt of relief out of the workhouse.

Penalty for introducing Spirituous Liquors, &c.—By 4 & 5 Will. 4, c. 76, s. 93, if any master of a workhouse shall order any spirituous or fermented liquor to be introduced into any workhouse, except for his own domestic use, or that of any officer of the workhouse, or except under the written authority of the surgeon or any justice visiting the workhouse, or of the guardians, or in conformity with any rules or orders of the Commissioners; or if any such master or other officer of the workhouse shall himself introduce, or permit or suffer to be introduced, any such liquors, contrary to the rules of the Commissioners; or shall punish with corporal punishment any adult person, or confine any person for any misbehaviour longer than twenty-four hours, or such further space of time as may be ne-

cessary to carry him before a justice; or shall in any way abuse or ill-treat, or be guilty of any other misbehaviour, or otherwise misconduct himself towards any poor person in such workhouse; he is liable, upon complaint of the overseers or guardians of the parish or union to which the workhouse belongs, or of any such poor person, before *two justices*, to a penalty not more than 20*l.* In default of payment, commitment to the common gaol or house of correction not exceeding six calendar months. And the justices have power to order the salary of the offender to be stopped, and applied towards payment of the penalty.

By *sect. 94*, the master of every workhouse must hang up copies of the last clause, and also of *sect. 92* (prohibiting any other person from introducing spirituous liquors into the workhouse), in one of the most public places of the workhouse, and see that they be always fair and legible; under the penalty of 10*l.*

Disobeying Orders of Justices, &c.—By *sect. 95*, if any overseer, assistant overseer, master of a workhouse, or other officer of any parish or union, shall wilfully disobey the legal and reasonable orders of the justices and guardians, in carrying the rules, orders and regulations of the Commissioners or Assistant Commissioners, or the provisions of the act, into execution, he is liable to a penalty not exceeding 5*l.*; but (by *sect. 96*) not, if the order of the justices or guardians is illegal.

Embezzling Goods, &c.—By *sect. 97*, if any master of a workhouse, or other person employed by the guardians, shall purloin, embezzle, or wilfully waste or misapply any of the monies, goods, or chattels belonging to any parish or union, the offender, in addition to any other pains and penalties for the offence, is liable, on conviction before two justices, to forfeit not exceeding 20*l.*, and also treble the amount or value of the property, and is rendered incapable of serving any office under any act relating to the relief of the poor.

For the recovery of the above penalties, see *ante*, title *Commissioners*, p. 678.

5. *Persons contracting to supply the Poor in Workhouses.*

Previous notice of Contract.—By 55 Geo. 3, c. 137, s. 7, when any contract shall be entered into for supplying any articles for the use of the poor in the workhouse, or for erecting any building, the expense whereof is to be defrayed out of the poor rate, the churchwardens and overseers, or other persons having the management of the

poor, shall cause notice of their intention to enter into such contract, and of the time and place when and where they will assemble and meet for such purpose, and of the security which will be required for the performance of the contract, to be affixed in a conspicuous manner on the outer door of the church, or to be inserted in one or more of the public newspapers most generally circulated in the neighbourhood, seven days at the least previous to such meeting, in order that any person willing to undertake the contract may make proposals for that purpose to the parish officers.

Contract to be in conformity to Rules of the Commissioners.—By 4 & 5 Will. 4, c. 76, s. 49, any contract which shall be entered into by or on behalf of any parish or union, for or relating to the maintenance, clothing, lodging, employment or relief of the poor, which shall not be made in conformity with the rules, orders, or regulations of the Poor Law Commissioners, or otherwise sanctioned by them, shall be voidable, and, if the Commissioners shall so direct, shall be null and void. All payments made under any such contracts not entered into in conformity with such rules, at any period after the Commissioners have declared the same to be null and void, are to be disallowed in passing the accounts of the parish officer.

Penalty for Officers supplying Goods or Provisions.—By sect. 77, no person in any parish or union filling any office relating to the relief of the poor can furnish or supply for his own parish, or on his own account, any goods, materials, or provisions ordered to be given in parochial relief; or furnish or supply any goods, &c. in respect of the money ordered to be given in parochial relief to any person in such parish or union; under the penalty of 5*l.*, on conviction before two justices; one half to be paid to the informer, and the other half in aid of the poor rate (*b*).

Contractors subject to Jurisdiction of Justices.—By 50 Geo. 3, c. 50, s. 2, persons contracting for the maintenance of the poor of any parish are, with respect to all things which they contract to perform, subject to the jurisdiction of justices of the peace, in like manner as overseers; and every order of a justice upon such contractor may be enforced in the same manner as an order upon an overseer, and he is liable to the same penalties for disobedience of such order.

A contract made by a majority of the churchwardens and overseers will bind the rest (*c*).

(*b*) And see *ante*, p. 746.

(*c*) *R. v. Beeston*, 3 T. R. 592.

3. *Of the Admission of Paupers into the Workhouse, and of their Treatment and Conduct there.*

1. Provisions under Gilbert's Act ..	750	5. Army and Navy Pensioners.....	766
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1. *Provisions under Gilbert's Act.*

By 22 Geo. 3, c. 83, s. 29, no persons can be sent to the poor house under the provisions of that act, except such as are become indigent by old age, sickness, or infirmities, and are unable to acquire a maintenance by their labour, and except such orphan children as shall be sent thither by order of the guardians with the approbation of the visitor, and except such children as shall necessarily go with their mothers thither for sustenance.

By *sect.* 28, every person so sent must deliver to the governor of the poor house an order, signed by one of the guardians of the parish from which such person shall come, for his admission in the form or to the effect contained in the schedule to the act.

Infant Children.—By *sect.* 30, all infant children of tender years, and who from accident or misfortune shall become chargeable to the parish to which they belong, may either be sent to any poor house established under that act, or be placed by the guardians, with the approbation of the visitor, with some reputable person in or near such parish at such weekly allowance as shall be agreed upon, until the children shall be of sufficient age to be put into service or bound apprentice. A list of the names of every child so placed out, and by whom and where kept, must be given to the visitor, who is to see that they are properly treated, or cause them to be removed and placed under the care of some other person, if he finds just cause so to do; and when any child shall attain such age as before mentioned, it is to be placed out at the expense of the parish to which it belongs. If, however, the parents or relations of any such child, or any other responsible person, shall desire to receive and provide for it, and signify the same to the guardians at their monthly meeting, they are required to dismiss such child from the poor house, or from the care of such person as aforesaid, and deliver it to the parent, relative, or other person so applying for it. No child under the age of seven years can be separated from its parents, without their consent.

Agreement for Labour of Paupers.—By *sect.* 32, where any

poor person is able and willing to work, but cannot get employment, the guardians of the poor of the parish are required, on the application of such poor person, to agree for his labour at any work or employment suited to his strength and capacity in any parish near the place of his residence, and to maintain, or cause him to be properly maintained, lodged and provided for, until such employment shall be procured, and during the time of such work, and to receive the money to be earned by such work, and apply it in such maintenance, as far as the same will go, and make up the deficiency, if any; and, if the same shall exceed the money expended in such maintenance, he is to account for the surplus to such poor person. In case such poor person shall refuse to work, or run away from his work or employment, complaint is to be made by the guardian to some neighbouring justice, who, on conviction, may punish the offender, by committing him to the house of correction to hard labour, not exceeding three calendar months, nor less than one.

Providing Clothing.—By *sect. 33*, the guardian of the parish must provide, at the expense of the parish, suitable and necessary clothing for the persons sent by him to such poor house, and in case of his neglect, the governor, or one of the guardians of the poor house, may summon him before some neighbouring justice, who may direct him to provide such clothing as shall be necessary; and if he shall make default within ten days, the justice may direct the governor of the poor house, or the complaining guardian to provide the same, and to demand from the defaulting guardian the charges of such clothing; and in default of payment, the same may be levied by distress.

By *sect. 24*, the poor persons sent to every poor house under that act are to be maintained therein at the general expense of the respective parishes adopting the provisions of the act; and the treasurer, with the assistance of the governor, is to provide all fit and necessary provisions for the maintenance of the poor, and to keep an account thereof.

2. *Provisions under the new Poor Law.*

By 4 & 5 Will. 4, c. 76, s. 21, all the powers and authorities given by the above act of 22 Geo. 3, c. 83, and by every other act of parliament, general as well as local, as to the governing, providing for, and employing the poor in workhouses, or in any way relating to the relief of the poor, must now be exercised by the persons authorized

by law to exercise the same, under the control, and subject to the rules, orders and regulations of the Poor Law Commissioners.

Attending Religious Worship.—But by *sect. 19*, no rules of the Commissioners, nor any bye-laws, shall oblige any inmate of a workhouse to attend any religious service, which may be celebrated in a mode contrary to his religious principles, nor shall authorize the education of any child in any religious creed other than that professed by its parents, and to which the parents shall object, or in the case of an orphan, to which the godfather or godmother shall so object. And any licensed minister of the religious persuasion of any inmate of the workhouse may at all times in the day, on the request of the inmate, visit the workhouse for the purpose of affording religious assistance to such inmate, and also for the purpose of instructing his children in the principles of their religion.

Lunatics.—And by *sect. 45*, nothing in the act contained is to authorize the detention in any workhouse of any *dangerous lunatic, insane person, or idiot*, for any longer period than fourteen days, under the penalty of the person so detaining being guilty of a misdemeanor, unless the workhouse is duly licensed for the reception of lunatics, or is also a county lunatic asylum. The word “dangerous” in this section, it would seem, applies to insane persons and idiots, as well as to lunatics; and therefore no penalty would be incurred for detaining that description of persons, if not dangerous, any more than for detaining lunatics.

3. *Rules of the Poor Law Commissioners.*

The Commissioners have lately issued a general order, dated the 5th February, 1842, which contains the following rules and regulations as to the admission of paupers into the workhouse, and their treatment and conduct there.

Admission of Paupers.

Article 1. Every pauper who shall be admitted into the workhouse, either upon his first or any subsequent admission, shall be admitted in some one of the following modes only, that is to say:—

By a written or printed order of the board of guardians, signed by their clerk.

By a provisional written or printed order, signed by a relieving officer or an overseer of the poor.

By the master of the workhouse (or, during his absence or inability to act, by the matron) without any such order, in case of any sudden or urgent necessity.

Article 2. No pauper shall be admitted under any written or printed order as above mentioned, if the note bears date more than six days before the pauper duly presents it at the workhouse.

Article 3. If a pauper be admitted by a provisional order of a relieving officer or an overseer, or by the master or matron of the workhouse without an order, the admission of such pauper shall be brought before the board of guardians at their next ordinary meeting, who shall decide on the propriety of the pauper's continuing in the workhouse, or otherwise, and make an order accordingly.

Article 4. As soon as a pauper is admitted, he shall be placed in some room to be exclusively appropriated for the purpose of the reception of paupers on admission, to be termed "the receiving ward," and shall there remain until examined by the medical officer for the workhouse.

Article 5. If the medical officer upon such examination pronounce the pauper to be labouring under any disease of body or mind, the pauper shall be placed either in the sick ward, or in such other ward as the medical officer shall direct.

Article 6. If the medical officer pronounce the pauper to be free from any such disease, the pauper shall be placed in the part of the workhouse assigned to the class to which he may belong.

Article 7. Before being removed from the receiving ward, the pauper shall be thoroughly cleansed, and shall be clothed in a workhouse dress, and the clothes which he wore at the time of his admission shall be purified, and deposited in a place appropriated for that purpose, with the pauper's name affixed thereto. Such clothes shall be restored to the pauper when he leaves the workhouse. Provided always that the regulations in this article shall not apply to casual poor, wayfarers, and vagrants, unless the guardians shall so direct.

Article 8. Every pauper shall, upon his admission into the workhouse, be searched by or under the inspection of the proper officer, and all articles prohibited by any act of parliament, or by this order, which may be found upon his person, shall be taken from him, and if possible restored to him at his departure from the workhouse.

Classification of the Paupers.

Article 9. The paupers, so far as the workhouse admits thereof, shall be classed as follows, subject nevertheless to such arrange-

ments as the board of guardians may deem necessary, with regard to persons labouring under any disease of body or mind, or for the further subdivision of any such classes:—

Class 1. Men infirm, through age or any other cause.

Class 2. Able-bodied men, and youths above the age of fifteen years.

Class 3. Boys above the age of seven years, and under that of fifteen.

Class 4. Women infirm, through age or any other cause.

Class 5. Able-bodied women, and girls above the age of fifteen years.

Class 6. Girls above the age of seven years, and under that of fifteen.

Class 7. Children under seven years of age.

To each class shall be assigned that ward or separate building and yard, which may be best fitted for the reception of such class, and each class of paupers shall remain therein, without communication with those of any other class.

Article 10. Provided,

Firstly. That if for any special reason it shall at any time appear to the board of guardians to be desirable to depart from the regulations contained in Article 9, in respect of any married couple being paupers of the first and fourth classes, the guardians shall be at liberty to resolve that such couple shall have a sleeping apartment separate from those of the other paupers. Such resolution shall be entered in the minutes of the proceedings of the guardians, and a copy of the same shall be transmitted to the Poor Law Commissioners for their consent and approval, without which the said resolution shall be of no effect.

Secondly. That any paupers of the fifth and sixth classes may be employed constantly or occasionally as assistants to the nurses in any of the sick wards, or in the care of infants, or as assistants in the household work; and the guardians shall make such regulations, as shall enable the paupers of the fifth and sixth classes to be employed in the household work, without communication with the paupers of the second and third classes.

Thirdly. That any pauper of the fourth class, whom the master may deem fit to perform any of the duties of a nurse or assistant to the matron, may be so employed in the sick wards,

or those of the fourth, fifth, sixth, or seventh classes; and any pauper of the first class who may by the master be deemed fit, may be placed in the ward of the third class to aid in the management and superintend the behaviour of the paupers of such class.

Fourthly. That the guardians may make a regulation to be entered on their minutes, for the classification of the boys and girls above the age of ten years, in any particular case where they shall deem it advisable to deviate from the regulations in Article 9.

Fifthly. That the paupers of the seventh class may be placed in such of the wards appropriated to the female paupers, as shall be deemed expedient, and the mothers of such paupers shall be permitted to have access to them at all reasonable times.

Sixthly. The master of the workhouse (subject to any regulations to be made by the board of guardians and approved by the Poor Law Commissioners) shall allow the father or mother of any child in the same workhouse, who may be desirous of seeing such child, to have an interview with such child at some one time in each day, in some room in the said workhouse to be appointed for that purpose.

And the board of guardians shall make arrangements for permitting the members of the same family who may be in different workhouses, to have occasional interviews with each other at such times and in such manner as may best suit the discipline of the several workhouses.

Seventhly. That casual poor, wayfarers, and vagrants admitted by the master or matron of the workhouse shall be kept in the vagrant ward, or other separate ward of the said workhouse, and shall be dieted and set to work in such manner and under such regulations, as the guardians shall by a resolution to be entered upon the minutes of their proceedings direct, such resolution being subject to the approval of the Poor Law Commissioners.

Article 11. The guardians shall within fourteen days after this order shall have come into force, after consulting with the medical officer, report to the Poor Law Commissioners the greatest number of paupers which ought to be admitted into the workhouse; and when such number shall have been approved or fixed by the Poor Law Commissioners, it shall not be lawful for the guardians to ad-

mit into the workhouse, or retain therein, a larger number of paupers; and the fact of any excess above such number so approved of or fixed by the Poor Law Commissioners, which shall be made known by the visiting committee or the master of the workhouse to the board of guardians, shall be forthwith reported to the Poor Law Commissioners by the clerk to such guardians, and entered on the minutes of the meeting at which such fact was so made known, and the clerk to the said guardians shall take the direction of the board for summoning, within seven days, a special meeting of the guardians, for the purpose of considering the steps necessary to be taken for hiring, or otherwise providing additional workhouse accommodation.

Provided that if any alteration in the arrangement of the said workhouse, or any addition thereto, shall have been made, which may render such workhouse capable of accommodating a number of inmates larger than the number already approved or fixed by the Poor Law Commissioners, the guardians shall, after consulting their medical officer, report to the Poor Law Commissioners the additional number which the workhouse may be deemed capable of accommodating, in order that the number already fixed or approved may be altered by the said Commissioners as occasion may require.

Article 12. No pauper of unsound mind who may be dangerous, or who may have been reported as such by the medical officer for the workhouse, or who may require habitual or frequent restraint, shall be detained in the workhouse for any period exceeding fourteen days.

Discipline and Diet of the Paupers.

Article 13. All the paupers in the workhouse, except the sick and insane, and the paupers of the first, fourth and seventh classes, shall rise, be set to work, leave off work, and go to bed at the times mentioned in the form therein prescribed, and shall be allowed such intervals for their meals as are therein stated; and these several times shall be notified by the ringing of a bell; provided always that the guardians may, with the consent of the Poor Law Commissioners, make such alterations in any of the said times or intervals as the guardians may deem fit.

Article 14. Half an hour after the bell shall have rung for rising, the names of the paupers shall be called over by the master and matron respectively in the several wards provided for the second, third, fifth and sixth classes, when every pauper belonging to the respective wards must be present and must answer to his name, and be inspected by the master and matron respectively.

Article 15. The meals shall be taken by all the paupers, except the sick, the children, persons of unsound mind, wayfarers, and vagrants, and the paupers of the first and fourth classes, in the dining hall or day room, and in no other place whatsoever; and during the time of meals order and decorum shall be maintained, and no pauper of the second, third, fifth, or sixth classes shall go to or remain in his sleeping room, either in the time hereby appointed for work, or in the intervals allowed for meals, except by permission of the master or matron.

Article 16. The master and matron of the workhouse shall (subject to the directions of the board of guardians) fix the hours of rising and going to bed, for the paupers of the first, fourth, and seventh classes, and determine the occupation and employment of which they may be capable; and the meals for such paupers shall be provided at such times and in such manner as the board of guardians may direct.

Article 17. The paupers of the respective sexes shall be dieted with the food and in the manner described in the dietary table, which may be prescribed for the use of the workhouse, and in no other manner.

Provided however, that the medical officer for the workhouse may direct in writing such diet for any individual pauper as he shall deem necessary, and the master shall obey such direction until the next ordinary meeting of the board of guardians, when he shall report the same in writing to the guardians; and if the medical officer for the workhouse shall at any time certify that he deems a temporary change in the diet essential to the health of the paupers in the workhouse, or of any class or classes thereof, the guardians shall cause a copy of such certificate to be entered on the minutes of their proceedings, and shall be empowered forthwith to order by a resolution the said diet to be temporarily changed, according to the recommendation of the medical officer, and shall forthwith transmit a copy of such certificate and resolution to the Poor Law Commissioners.

Article 18. If any pauper shall require the master or matron to weigh the allowance of provisions served out at any meal, the master or matron shall forthwith weigh such allowance in the presence of the pauper complaining and of two other persons.

Article 19. No pauper shall have or consume any liquor, or any food or provision other than is allowed in the said dietary table, unless by the direction in writing of the medical officer, such direction to be obeyed and reported by the master as in Article 17.

Article 20. The clothing to be worn by the paupers in the workhouse shall be made of such materials as the board of guardians may determine.

Article 21. The paupers of the several classes shall be kept employed, according to their capacity and ability; and no pauper shall receive any compensation for his labour. Provided always that the guardians may, without any direction of the medical officer, make such allowance of food as may be necessary to paupers employed as nurses, or in the household work; but they shall not allow to such paupers any fermented or spirituous liquors.

Article 22. The boys and girls who are inmates of the workhouse shall, for three of the working hours at least every day, be respectively instructed in reading, writing, arithmetic, and the principles of the Christian religion, and such other instruction shall be imparted to them as shall fit them for service and train them to habits of usefulness, industry, and virtue.

Article 23. Any pauper may quit the workhouse, upon giving to the master (or during his absence or inability to act) to the matron, a reasonable notice of his wish to do so; and in the event of any able-bodied pauper having a family so quitting the house, the whole of such family shall be sent with him, unless the board of guardians shall for any special reason otherwise direct; and such directions shall be in conformity with the regulations of the said Commissioners with respect to out-door relief in force for the time being.

Article 24. Provided nevertheless that the board of guardians shall make such regulations as they may deem fit, subject to the approval of the Poor Law Commissioners, to enable the master of the workhouse to allow any pauper to quit the workhouse for some urgent or special reason, without giving any such notice as is required in Article 23, and to return after a temporary absence only; every such allowance to be reported by the master to the board of guardians at their next ordinary meeting.

Provided also that nothing herein contained shall prevent the master of the workhouse from allowing the paupers of each sex under the age of fifteen, subject to such restrictions as the board of guardians may impose, to quit the workhouse under the care and guidance of himself or the matron, schoolmaster, schoolmistress, porter, or some one of the assistants and servants of the workhouse, for the purpose of exercise.

Article 25. Any person may visit any pauper in the workhouse by permission of the master, or (in his absence) of the matron, subject

to such conditions and restrictions as the board of guardians may prescribe; such interview to take place, except where a sick pauper is visited, in a room separate from the other inmates of the workhouse, in the presence of the master, matron, or porter.

Article 26. No written or printed paper of an improper tendency, or which may be likely to produce insubordination, shall be allowed to circulate or be read aloud among the inmates of the workhouse.

Article 27. No pauper shall play at cards, or at any game of chance, in the workhouse; and it shall be lawful for the master to take from any pauper and keep until his departure from the workhouse any cards, dice, or other articles relating to games of chance, which may be in his possession.

Article 28. No pauper shall smoke in any room of the workhouse, except by the special direction of the medical officer, or shall have any matches or other articles of a highly combustible nature in his possession.

Article 29. Any licensed minister of the religious persuasion of any inmate of the workhouse, who shall at any time in the day, on the request of any inmate, enter the workhouse, for the purpose of affording religious assistance to him, or for the purpose of instructing his child or children in the principles of his religion, shall give such assistance or instruction so as not to interfere with the good order and discipline of the other inmates of the workhouse, and such religious assistance or instruction shall be strictly confined to inmates who are of the religious persuasion of such minister, and to the children of such inmates, except in the cases in which the board of guardians may lawfully permit religious assistance and instruction to be given to any paupers who are Protestant dissenters by licensed ministers who are Protestant dissenters.

Article 30. No work, except the necessary household work and cooking, shall be performed by the paupers on Sunday, Good Friday, and Christmas Day.

Article 31. Prayers shall be read before breakfast and after supper every day, and divine service shall be performed every Sunday in the workhouse (unless the guardians, with the consent of the Poor Law Commissioners, shall otherwise direct) at which all the paupers shall attend, except the sick, persons of unsound mind, the young children, and such as are too infirm to do so; provided that those paupers, who may object so to attend on account of their professing religious principles differing from those of the church of England, shall also be exempt from such attendance.

Article 32. The guardians may make such regulations as they deem expedient to authorize any inmate of the workhouse, being a member of the established church, and not being an able-bodied female pauper having an illegitimate child, to attend public worship at a parish church or chapel, on every Sunday, Christmas Day, and Good Friday, under the control and inspection of the master or porter of the workhouse or other officer.

Article 33. The guardians may also make such regulations as they deem expedient to authorize any inmate of the workhouse, being a dissenter from the established church, and not being an able-bodied female pauper having an illegitimate child, to attend public worship at any dissenting chapel in the neighbourhood of the workhouse, on every Sunday, Christmas Day, and Good Friday.

Punishments for Misbehaviour of the Paupers.

Article 34. Any pauper who shall neglect to observe such of the regulations herein contained, as are applicable to and binding on him;—

- Or who shall make any noise when silence is ordered to be kept;
- Or shall use obscene or profane language;
- Or shall by word or deed insult or revile any person;
- Or shall threaten to strike or to assault any person;
- Or shall not duly cleanse his person;
- Or shall refuse or neglect to work, after having been required so to do;
- Or shall pretend sickness;
- Or shall play at cards or other game of chance;
- Or shall enter or attempt to enter, without permission, the ward or yard appropriated to any class of paupers other than that to which he belongs;
- Or shall misbehave in going to, at, or returning from public worship out of the workhouse, or at prayers in the workhouse;
- Or shall return after the appointed time of absence, when allowed to quit the workhouse temporarily;
- Or shall wilfully disobey any lawful order of any officer of the workhouse;

shall be deemed *disorderly*.

Article 35. Any pauper who shall, within seven days, repeat any one, or commit more than one, of the offences specified in Article 34;—

- Or who shall by word or deed insult or revile the master or

matron, or any other officer of the workhouse, or any of the guardians;
 Or shall wilfully disobey any lawful order of the master or matron, after such order shall have been repeated;
 Or shall unlawfully strike or otherwise unlawfully assault any person;
 Or shall wilfully or mischievously damage or soil any property whatsoever belonging to the guardians;
 Or shall wilfully waste or spoil any provisions, stock, tools, or materials for work belonging to the guardians;
 Or shall be drunk;
 Or shall commit any act of indecency;
 Or shall wilfully disturb the other inmates during prayers or divine worship;
 shall be deemed *refractory*.

Article 36. It shall be lawful for the master of the workhouse, with or without the direction of the board of guardians, to punish any *disorderly* pauper, by substituting during a time not greater than forty-eight hours, for his or her dinner as prescribed by the dietary, a meal consisting of eight ounces of bread, or one pound of cooked potatoes, and also by withholding from him during the same period all butter, cheese, tea, sugar, or broth, which such pauper would otherwise receive at any meal during the time aforesaid.

Article 37. It shall be lawful for the board of guardians, by a special direction to be entered on their minutes, to order any *refractory* pauper to be punished by confinement in a separate room, with or without an alteration of diet, similar in kind and duration to that prescribed in Article 36 for disorderly paupers; but no pauper shall be so confined for a longer period than twenty-four hours, or if it be deemed right that such pauper should be carried before a justice of the peace, and if such period of twenty-four hours should be insufficient for that purpose, then for such further time as may be necessary for such purpose.

Article 38. It shall be lawful for the board of guardians, by any special or general order, to direct that a dress different from that of the other inmates shall be worn by disorderly or refractory paupers during a period of not more than forty-eight hours, jointly with or in lieu of the alteration of diet to which any such pauper might be subjected by the regulations herein contained; but it shall not be lawful for the board of guardians to cause any penal dress or distinguishing mark of disgrace to be worn by any adult pauper or class

of adult paupers, unless such pauper or paupers shall be disorderly or refractory, within the meaning of Article 34 or Article 35 of this order.

Article 39. If any offence, whereby a pauper becomes refractory under Article 35, be accompanied by any of the following circumstances of aggravation: (that is to say) if such pauper persist in using violence against any person;

Or persist in creating a noise or disturbance, so as to annoy a considerable number of the other inmates;

Or endeavour to excite other paupers to acts of insubordination;

Or persist in acting indecently or obscenely in the presence of any other inmate;

Or persist in mischievously breaking or damaging any goods or property of the guardians;

it shall be lawful for the master, without any direction of the board of guardians, immediately to place such refractory pauper in confinement for any time not exceeding twelve hours; which confinement shall, however, be reckoned as part of any punishment afterwards imposed by the board of guardians for the same offence. But it shall not be lawful for the master to confine any adult pauper, without the direction of the board of guardians in that behalf, except in one of the cases specified in this article.

Article 40. Every refractory pauper shall be deemed to be also disorderly, and may be punished as such; but no pauper who may have been punished for any offence as disorderly, shall afterwards be punished for the same offence as refractory, and no pauper who may have been punished for any offence as refractory shall afterwards be punished for the same offence as disorderly.

Article 41. No pauper who may have been under medical care, or who may have been entered in the medical weekly return as sick or infirm, at any time in the course of the seven days next preceding the day of the commission of the offence, or who may be reasonably supposed to be under twelve, or above sixty years of age, or who may be pronounced by the medical officer for the workhouse to be pregnant, or who may be suckling a child, shall be punished by alteration of diet or by confinement, unless the medical officer shall have previously certified in writing that no injury to the health of such pauper is reasonably to be apprehended from the proposed punishment; and any modification diminishing such punishment, which the medical officer for the workhouse may suggest, shall be adopted by the master.

Article 42. No pauper shall be confined between eight o'clock in

the evening and six o'clock in the morning, without being furnished with a bed and bedding suitable to the season, and with the other proper conveniences.

Article 43. No child under twelve years of age shall be confined in a dark room, or during the night.

Article 44. No corporal punishment shall be inflicted on any male child, except by the schoolmaster or master of the workhouse.

Article 45. No corporal punishment shall be inflicted on any female child.

Article 46. No corporal punishment shall be inflicted on any male child, except with a rod or other instrument, such as shall be seen and approved of by the board of guardians or by the visiting committee.

Article 47. No corporal punishment shall be inflicted on any male child, until six hours shall have elapsed from the commission of the offence for which such punishment is inflicted.

Article 48. Whenever any male child is punished by corporal correction, the master and schoolmaster shall (if possible) be both present.

Article 49. No male child shall be punished by corporal correction, whose age may be reasonably supposed to exceed fourteen years.

Article 50. The master of the workhouse shall keep a book to be furnished him by the guardians, in the form therein prescribed, in which he shall duly enter,

Firstly. All cases of refractory or disorderly paupers, whether children or adults, reported to the board of guardians for their decision thereon.

Secondly. All cases of paupers, whether children or adults, who may have been punished without the direction of the board of guardians, with the particulars of their respective offences and punishments.

Article 51. The person who punishes any child with corporal correction shall forthwith report to the master the particulars of the offence and punishment; and the master shall enter the same in the book specified in Article 50.

Article 52. Such book shall be laid on the table at every ordinary meeting of the board of guardians, and every entry made in such book since the last ordinary meeting shall be read to the board by the clerk.

The guardians shall thereupon in the first place give direction as to any confinement or other punishment of any refractory or disorderly pauper reported for their decision, and such direction shall

be entered on the minutes of the proceedings of the day, and a copy thereof shall be inserted by the clerk in the book specified in *Article 50*.

The guardians, in the second place, shall take into their consideration the cases in which punishments are reported to have been already inflicted by the master or other officer; and the opinion of the guardians in every such case shall be entered on the minutes of the day, and shall be communicated to the master by the chairman or clerk; and if the opinion of the guardians be, that the master or other officer has in any case acted illegally or improperly, a copy of the minute of such opinion shall be forwarded by the clerk to the Poor Law Commissioners.

Article 53. Every pauper above the age of seven years who is in the workhouse, and who may have been punished since the last ordinary meeting of the guardians, or who may be reported as refractory or disorderly, shall be brought into the board room during the sitting of the board of guardians at their next ordinary meeting, whether he may request it or not, and shall have an opportunity of complaining to the guardians of any undue punishment, or of any unjust charge; and the fact of such pauper having been brought before the guardians shall be entered on the minutes of the proceedings of the day. Provided, that if any pauper so reported shall be an inmate of a workhouse in which the guardians do not usually meet, it shall be sufficient if such pauper be brought before the visiting committee at their next attendance at such workhouse.

Article 54. Any pauper above the age of fourteen years, who shall unlawfully introduce, or attempt to introduce, spirituous or fermented liquors into the workhouse, and any pauper, who shall abscond from the workhouse with clothes belonging to the guardians, shall be forthwith taken before a justice of the peace, to be dealt with according to law.

Article 55. The master shall cause a legible copy of the regulations respecting disorderly and refractory paupers contained in this order to be kept suspended in the dining hall of the workhouse, or in the room in which the inmates usually eat their meals, in the school room or school rooms, and in the receiving wards, and also in the board room of the guardians.

4. Penalties for Misconduct of Paupers.

Embezzling Clothing, &c.—By 50 Geo. 3, c. 50, s. 4, if any person sent to any workhouse shall embezzle, or wilfully waste, spoil,

or damage any of the clothing, goods, or materials committed to his care, or shall take or carry away, without permission of the overseer or keeper of the workhouse, any materials provided for the use of such poorhouse, complaint may be made to a justice of the district, and two justices may hear the complaint, and upon conviction commit the offender to the house of correction to hard labour not exceeding two calendar months, nor less than seven days.

Receiving Property in Pawn.—By 55 Geo. 3, c. 137, s. 1, the property of the goods and other things provided for the use of the poor of any parish is declared to be vested in the overseers of the poor, for the purposes of any proceeding by action or indictment; and (by *sect.* 2) the overseers may cause the same to be marked. And if any pawnbroker, or other person, shall knowingly take in pawn, buy, exchange, or receive any goods or things provided for the use of the poor in any workhouse, or given to them by the overseers, or any of the goods or materials carried into any such workhouse to be manufactured or used by the poor there, or any of the goods or furniture of such workhouse; or shall receive or buy any of the provisions allotted to or provided for the poor of such workhouse, or shall be aiding or assisting therein; or if any person shall cause any such mark or stamp to be obliterated or defaced;—Penalty not exceeding 5*l.*, nor less than 1*l.*, upon conviction before one justice, on the oath of one witness, half to the informer and half to the overseers; and, in default of payment, the offender to be committed to the common gaol or house of correction not exceeding two calendar months. And if any person shall desert or run away from any workhouse, and carry away with him any clothes, linen, or other goods or things, he is liable, on conviction by one justice, on the oath of one witness, to be committed to the common gaol or house of correction for three calendar months. In all such cases the mark on any such things (being duly authenticated) is to be sufficient evidence, without further proof, of the right of property in the overseers.

Refusing to work.—By *sect.* 5, if any person maintained in any workhouse shall refuse to work at any occupation or employment suited to his age, strength, and capacity, or shall be guilty of drunkenness or other misbehaviour, the offender, on conviction before one justice, may be committed to the common gaol or house of correction not exceeding twenty-one days to hard labour.

Introducing spirituous Liquors.—By 4 & 5 Will. 4, c. 76, s. 92, if any person shall carry, bring, or introduce, or attempt or endea-

vour to bring &c., into any workhouse any spirituous or fermented liquor, without the order in writing of the master of the workhouse, the master, or any officer of the same, may apprehend him and carry him before a justice, and upon conviction he is liable to a penalty not exceeding 10*l.* for every such offence; and, in default of payment, may be committed to the common gaol or house of correction not exceeding two calendar months.

For the recovery of the above penalty, see *ante*, p. 678, title *Commissioners*.

Commitment of a Pauper maintained in a Workhouse, for disorderly Conduct, under
55 Geo. 3, c. 137, s. 5 (y).

Kent, } To the governor or keeper of the house of correction at — in the county
to wit. } of —, or his deputy.

Receive into your custody the body of A. B. herewith sent you, brought before me J. P., esquire, one of her Majesty's justices of the peace in and for the said county, who is this day charged and convicted before me, upon the oath of C. D., master of the workhouse of the parish of — in the said county; for that he the said A. B., being a person maintained in the workhouse of the parish of — aforesaid, the same being a public workhouse established for the relief, maintenance and employment of the poor of the said parish of —, did, on the — day of —, refuse to work at a certain work, occupation, or employment suited to his age, strength, and capacity, to wit [*state the particular facts, or* "that the said A. B. was on the — day of — guilty of drunkenness"], against the statute in that case made and provided: And I the said justice do further direct you the said keeper of the said house of correction safely to keep the said A. B. in your custody, without bail or mainprize, to hard labour for the space of [*any time not exceeding twenty-one days*], and for your so doing this shall be your sufficient warrant. Given under my hand and seal at — in the county aforesaid, this — day of —, in the year of our Lord 1842. J. P. (L.S.)

5. *Army and Navy Pensions.*

By 2 & 3 Vict. c. 51, s. 2, when relief shall be given to any person entitled to or in receipt of any army or naval pension, or any superannuation or other allowance, in respect of his service in the army, navy, marines, or ordnance, or any other branch of the military service, or in any civil branch of the army, navy, marines, or ordnance, or to his wife, or to any person whom he may be liable to maintain, by admission of such pensioner, his wife, or person, into the workhouse of any union or parish, it shall be lawful for the guardians of such union, by minute, in the form in the schedule to the act marked (A), with respect to any pension payable at Chelsea Hospital,—and in the form in the schedule marked (B), with respect to any Green-

wich out-pensions,—and in the form in the schedule marked (C), with respect to any other of the before mentioned pensions, superannuation or allowance,—to require that the next payment which shall become due of such pension or allowance shall be made to such guardians, who shall transmit a copy of such minute, attested by their clerk, at least one month before such payment shall become due, and addressed, as to pensions payable at Chelsea Hospital, to the secretary of Chelsea Hospital, with the words “Chelsea Pension” written thereon,—and as to Greenwich out-pensions, to the Paymaster-General, Out-pension Office, Tower Hill, with the words “Greenwich Out-pension” written thereon,—and as to all other pensions, to the Paymaster-General, Whitehall, London; whereupon the Commissioners and Paymaster-General may respectively cause payment to be made to such guardians, who are required to enter upon their minutes the nature and amount of relief actually given to such pensioner, or his wife, or other person, and upon application made by the pensioner to the clerk of the guardians, to inform the pensioner of the amount thereof. The guardians so receiving any pension or allowance shall retain and apply so much thereof as will repay the cost of relief actually given, for the use and indemnity of the union or parish, and shall pay the surplus (if any) to the pensioner. Upon the receipt of any such minute, the payment of the pension shall be suspended, until sufficient proof is given to entitle the guardians to receive the money thereby required to be paid to them. But where such relief shall not be given to the pensioner himself, the guardians, before transmitting any such minute as aforesaid, shall obtain satisfactory proof that the person to whom the relief shall be given is the lawful wife of the pensioner, or a person whom such pensioner is by law liable to maintain; which proof shall also be entered upon the minutes of the board of guardians.

The following are the forms referred to by the above section.

SCHEDULE (A).

1. Minute of Board of Guardians, as to a Chelsea Pensioner.

The guardians of the union or parish of —, in the county of —, do hereby certify to the Lords and others Commissioners of the Royal Hospital for Soldiers at Chelsea, in the county of Middlesex, that —, an out-pensioner from the — regiment of —, at — per diem, was on the — day of — received into the workhouse at — [or that the wife, or other relation whom the said — is bound to maintain, was so received, as the case may be,] by order of the said guardians; and the said guardians do thereupon, in pursuance of an act passed in the second and third years of her Majesty Queen Victoria, intituled [*the title of the act,*] require that the next quarter's pen-

sion of the said — shall be paid to the said guardians, to be applied pursuant to the provisions of the said act of parliament.

Dated —.

Certified on the — day of — at a meeting of the board of the said guardians by

A. B., Chairman.

C. D., Clerk,

To the Lords and others,
Commissioners of Chelsea Hospital.

SCHEDULE (B).

2. Minute of Board of Guardians, as to a Greenwich Pensioner.

The guardians of the union or parish of —, in the county of —, do hereby certify to her Majesty's Paymaster-General, that —, a Greenwich out-pensioner No. —, at — per annum, was on the — day of — received into the workhouse at — [or that the wife, or other relation whom the said — is bound to maintain, was so received, as the case may be,] by order of the said guardians; and the said guardians do thereupon, in pursuance of an act passed in the second and third years of her Majesty Queen Victoria, intituled [the title of the act,] require that the next quarter's pension of the said — shall be paid to the said guardians, to be applied pursuant to the provisions of the said act of parliament.

Dated —.

Certified on the — day of — at a meeting of the board of the said guardians by

A. B., Chairman.

C. D., Clerk.

To her Majesty's Paymaster-General,
Greenwich Out-pension Office, Tower Hill.

SCHEDULE (C).

3. Minute of Board of Guardians, as to any other Pensioner.

The guardians of the union or parish of —, in the county of —, do hereby certify to her Majesty's Paymaster-General, that —, a person entitled to [here state whether for pension, or allowance, in civil or military service, not as Chelsea or Greenwich out-pensioner,] at — per annum, was on the — day of — received into the workhouse at — [or that the wife, or other relation whom the said — is bound to maintain, was so received, as the case may be,] by order of the said guardians; and the said guardians do thereupon, in pursuance of an act passed in the second and third years of her Majesty Queen Victoria, intituled [the title of the act,] require that the next quarter's pension of the said — shall be paid to the said guardians, to be applied pursuant to the provisions of the said act of parliament.

Dated —.

Certified, &c. [as before.]

To her Majesty's Paymaster-General,
Whitehall, London.

III. OF THE LIABILITY OF RELATIONS TO MAINTAIN EACH OTHER.

By 42 Eliz. c. 2, s. 7, the father and grandfather, and the mother and grandmother, and the children of every poor, old, blind, lame

and impotent person, or other poor person not able to work, being of sufficient ability, shall at their own charges relieve and maintain every such poor person in that manner and according to that rate, as by the justices of peace of that county, where such sufficient persons dwell, at their general quarter sessions shall be assessed, upon pain of forfeiting 20s. for every month which they shall fail therein. By *sect. 11*, this penalty is to go to the use of the poor of the same parish, and may be levied by warrant from two justices by distress; in default of which the offender to be committed to prison till the forfeitures are paid.

Power given to two Justices.—By 59 Geo. 3, c. 12, s. 26, two justices at a petty session may make such order for the relief of every poor, old, blind, lame, impotent or other poor person not able to work, upon the father, grandfather, mother, grandmother, or child (being of sufficient ability) of every such poor person, as may by virtue of the above act of Elizabeth be made at the quarter sessions; and the disobedience of such order is declared to be punishable in like manner.

The statute of Elizabeth only extends to *natural* relations; a son-in-law, therefore, is not bound to provide for his mother-in-law (*z*).

Liability of Husbands and Parents.—By 4 & 5 Will. 4, c. 76, s. 56, all relief given to or on account of the wife, or any child under the age of sixteen, not being blind or deaf and dumb, is to be considered as given to the husband of such wife, or to the father of such child; and any relief given to or on account of any child under sixteen of any widow, is to be considered as given to such widow.

By *sect. 57*, every man, who marries a woman having a child at the time of such marriage, whether legitimate or not, is liable to maintain it, as a part of his family (*a*), and is chargeable with all relief granted to such child, until it attains the age of sixteen, or until the death of the mother.

But a son's wife, or widow, is not maintainable by the son's father (*b*).

Although the father be living, yet if he be unable, the grandfather, being of ability, may be compelled to keep the grandchild, and also to pay so much money as the justices shall think reasonable for the time past (*c*); and the order on the grandfather need not allege that

(*z*) *R. v. Munday*, 1 Str. 190.

(*a*) The law was different before in this respect. See *Tubb v. Harrison*, 4 T. R. 48; *Cooper v. Martin*, 4 East, 76.

(*b*) *R. v. Kempson*, 2 Str. 955; *R. v. Dunn*, 2 Nol. 263.

(*c*) *Reg. v. Joyce*, 16 Vin. 423.

the father is unable (*d*); but the order should state, that the party on whom it is made is of sufficient ability (*e*) and that the poor person is either old, blind, lame, impotent or unable to work (*f*), and has become chargeable to the parish (*g*). It seems, that the amount of the maintenance is in the discretion of the justices, and that they are not limited to the amount of the penalty (20s. a month) for disobedience to the order (*h*). The order must be positive, and state how long the maintenance is to continue (*i*), and it must be made by the justices of that county where the sufficient person dwells; therefore, if a child lives in the county of *Middlesex*, and be maintained by the parish there, and the grandfather lives in the county of *Suffolk*, the justices of *Middlesex* can make no order, but it must be made by the justices of *Suffolk*. An indictment will lie for disobedience to the order, as well as the proceeding for the penalty before the justices (*h*).

By 4 & 5 Will. 4, c. 76, s. 78, all sums of money which shall be assessed by any justices of the peace on the father, grandfather, mother, grandmother, child or children of any poor person, under the provisions of the 43 Eliz. c. 2, s. 7, or any other act, and all penalties, to which any person so assessed are liable for any default in paying the same, are recoverable in the same manner as any penalty under the act.

By the 43 Eliz. c. 2, s. 6, an appeal is given to the quarter sessions from any order of the justices under that act; though, in general, an appeal will not lie against an order for relief (*l*).

Persons deserting their Families.—By 5 Geo. 1, c. 8, s. 1, where any person deserts his wife or children, leaving them upon the charge of the parish, the churchwardens or overseers may, by warrant from two justices, seize so much of the goods, and receive so much of the annual rents of the lands and tenements of such person, as the justices shall order and direct, towards the discharge of the parish for the bringing up and providing for such wife or children. The order of the justices must be confirmed at the next quarter sessions, before the overseers can dispose of the goods or receive the rents. Any order of justices made under this statute must state how much of the goods or rents should be seized, and must specify the quantum of

(*d*) *R. v. Cornish*, 2 B. & Adol. 498.

(*e*) *Reg. v. Halifax*, 1 Bott, 431.

(*f*) *R. v. Gulley*, 1 Bott, 366.

(*g*) *R. v. Joyce*, *supra*.

(*h*) 2 Burr. 799.

(*i*) *R. v. Pennoyr*, 1 Bott, 433.

(*k*) *R. v. Robinson*, 2 Burr. 799.

(*l*) *R. v. Justices of Devon*, 4 M. & S. 421.

relief to be appropriated out of them, and, in the case of rents, must limit the period of such appropriation (*m*). But the act applies to runaways only; therefore, although a man refuses to maintain his wife, yet if he continues in the parish, no order can be made to seize his effects.

Army and Navy Pensioners.].—By 2 & 3 Vict. c. 51, s. 4, when any pensioner, or other person entitled to or in receipt of any army, naval or other pension or allowance, shall leave his wife or family in any union or parish, or shall suffer them to become chargeable, two justices for the county or place in which such union or parish is situate, upon complaint made on oath to them by any one of the guardians of such union or parish, or any one of the churchwardens and overseers where no union or board of guardians is established, or by the relieving officer of such union or parish, and upon due and satisfactory proof being given to the magistrates that the person so left is the lawful wife of the pensioner, or his lawful child (as the case may be), may by order under their hands and seals, as to army pensions payable at Chelsea Hospital, in the form set out in the schedule to the act marked (F),—and as to Greenwich out-pensioners, in the form set out in the schedule marked (G),—and as to all other pensions and allowances payable by the Paymaster-General, in the form set out in the schedule marked (H),—direct that one half of the next payment of such pension or other allowance, in case it shall be the wife or one child only, who shall have been so left, or suffered to become, chargeable,—or two thirds thereof, in case a wife and child (whether his own or a step-child), or two or more children, shall have been left or suffered to become chargeable,—shall be made to the guardians of such union or parish, or to the churchwardens and overseers of the poor of the parish, to which such wife or family shall have become chargeable; and such guardians or churchwardens and overseers of the poor shall transmit such order to the Commissioners of Chelsea Hospital,—and with respect to such naval and other pensions as aforesaid, to the Paymaster-General, Whitehall, London,—in like manner and within the like period as any assignment is before directed to be transmitted; and, upon sufficient proof being given that the pensioner is living when the pension becomes payable, and would have been entitled to receive the same if no such order had been made, the Commissioners or Paymaster may cause the payment of one moiety or two thirds, as the case may be, to be made to the

(*m*) *Stable v. Dixon*, 6 East, 163.

said guardians or churchwardens and overseers, for whose security such order shall have been made, who shall retain and apply the same, or so much thereof as shall have been actually expended for the purposes aforesaid, for the use and indemnity of the union or parish, and shall pay the overplus (if any) to the pensioner. Upon the receipt of any such order, the payment of the pension shall be suspended, until sufficient proof by the personal appearance of the pensioner before the collector of excise, or in such other manner as shall be directed by the Commissioners of Chelsea Hospital or Paymaster-General, shall have been given, to entitle the guardians or churchwardens and overseers to receive the money thereby directed to be paid to them. But where it shall be made to appear to the justices, that the wife of the pensioner is notoriously profligate, or cohabiting with any other person than her husband, the justices are to refuse making any such order.

When Pensioner insane.—By *sect. 5*, if any such army pensioner becomes insane, one justice may certify the same to the Commissioners of Chelsea Hospital, who may thereupon order the pension to be paid to the guardians or parish officers, or to the wife, child, or other person, to whom the care of the pensioner shall be entrusted, or to the treasurer of the county, if he is confined in a county or other lunatic asylum (*n*).

By *sect. 6*,—reciting the 11 Geo. 4, c. 20, s. 70, which enables the treasurer of the navy or the paymaster of marines, in case any officer, seaman or marine becomes insane, to pay over to the wife, relative, or other person having the care and maintenance of him, such monies as shall become payable in right of any pay, half-pay, pension, or prize money, to be applied towards his maintenance and support,—it is declared that the power given by that act shall be extended to pensions for services in the civil departments of the navy.

Families of Seamen not in the Royal Service.—By 59 Geo. 3, o. 12, s. 32, where the wife or family of any *seaman* employed in any voyage (*not being in the royal service*) shall, during his absence on such employment, become chargeable to any parish, two justices, upon the like complaint of one of the churchwardens and overseers, may, by order under their hands and seals, direct the acting owner,

(*n*) It is rather extraordinary that the provision of this section should only extend to *army pensioners*; the next section, which relates to *navy pensioners*, autho-

rizing no payment of the pension to the *guardians or parish officers, eo nomine*, but merely to the person having the care and maintenance of the lunatic.

ship's husband, or agent of the ship in which such seaman shall be employed, to pay out of the wages which shall become due to him unto the churchwardens and overseers, so much as shall have been by the parish necessarily expended for their maintenance or relief, the amount, in case of any dispute, to be ascertained by two justices, whose determination shall be final; and upon the production of such order, the party, by whom the wages shall be payable, shall pay to one of the churchwardens and overseers the amount of the wages then due. In default of payment, the amount may be levied in like manner as any poor's rate in arrear. But the payment cannot be compelled, until the voyage is completed.

Families of Seamen convicted of smuggling.—By 11 Geo. 4, c. 10, s. 2, one half of the wages of every seaman adjudged to serve in the royal navy, under any act for the prevention of smuggling, whose wife or family shall become chargeable to any parish, shall be made available for the support of his wife and family; in order to effectuate which purpose, one of the churchwardens and overseers must make complaint on oath to two justices, and upon the transmission by the justices of a certificate thereof to the Commissioners of the navy, specifying therein the proportion (not exceeding one half) of the wages they shall deem necessary to be paid for the relief of the parish, according to the circumstances, having regard to the number of the family, the Commissioners shall cause payment thereof to be made to such person as shall be named in the justices' certificate, in the same manner as allotments of seamen's wages are payable; and the monies so paid shall be applied towards the relief and indemnity of the parish.

For the punishment of persons running away and wilfully deserting their families, see *post*, title *Vagrants*.

1. *Certificate by Justices for the payment of the Wages of a Seaman convicted of smuggling, for the Relief of his Wife, under the 11 Geo. 4, c. 10, s. 2.*

To the Commissioners of her Majesty's Navy.

County of } Whereas complaint on oath hath been this day made to us, J. P. and
 ———. } K. P., esquires, two of her Majesty's justices of the peace acting in and for the county of ———, by the churchwardens and overseers of the poor of the parish of ——— in the county of ——— aforesaid, that C. B. the wife of A. B. and their two children [*insert their names and ages*] have become chargeable to the said parish of ———: And whereas it hath been made to appear before us, that the said A. B. is a seaman now serving in her Majesty's naval service, under and by virtue of the several acts made for the prevention of smuggling, and that the wages at which such seaman is rated in the ship's book are ———: We do therefore certify, that we deem it necessary that out of the wages of the said A. B. one-third [*or "one-half"*] of the same,

amounting to —, shall be paid to the churchwardens and overseers of the said parish for the relief of the same.

Given under our hands and seals at — in the said county, this — day of —, in the year of our Lord 1842.

2. *Order by Justices to Overseers, &c. to receive a Seaman's Wages, for the Indemnity of the Parish, under the 59 Geo. 3, c. 12, s. 32 (v).*

To W. M., the owner (*p*) of the ship Aurora.

Kent, } Whereas complaint on oath hath been this day made before us, J. P. and
to wit. } K. P. esquires, two of her Majesty's justices of the peace acting in and for
the county of Kent, by the churchwardens and overseers of the poor of the parish of
T. in the said county, that C. B. the wife of A. B. and their two children, to wit [*insert their names and age*] have become chargeable to the said parish of T.: And whereas
it hath been made to appear to us, that the said A. B. is now employed in the actual
service of W. M. on board the ship Aurora, on a voyage to the East Indies, and not
in her Majesty's service; and that during his absence on such employment the over-
seers of the said parish of T. have necessarily laid out and expended in the maintenance
and relief of the wife and family of the said A. B. the sum of —: We do therefore
order and direct you the said owner [*or "ship's husband, &c.," as it may be,*] forthwith
on receipt hereof, to pay unto the churchwardens and overseers of the poor of the pa-
rish of T. aforesaid, or to such one of them as shall demand the same, the said sum of
— out of the wages which are, or shall become, due to the said A. B., in discharge
of the said money so expended in the maintenance and support of the said wife and
children of the said A. B.: and the receipt of such churchwarden or overseer shall be
to you a good and sufficient discharge for the said sum of — hereby directed to be
paid for the purpose aforesaid.

Given under our hands and seals this — day of — in the year of our Lord 1842.

J. P. (L. s.)

K. P. (L. s.)

3. *Order of two Justices for payment to the Guardians of a portion of an Army Pension, under the 2 & 3 Vict. c. 51, s. 4 (q).*

County of } To the Right Honourable the Lords and others, Commissioners of the
—, } Royal Hospital, Chelsea.

Whereas complaint upon oath hath been made unto us, two of her Majesty's justices
of the peace acting in and for the said county, by the — of the union [*or "parish"*]
of — in the county aforesaid, that —, late a soldier in the — regiment of —,
but now a pensioner of the Royal Hospital at Chelsea from the said regiment at the
rate of — per diem, hath suffered — his wife to become chargeable to the said
union [*or "parish"*], and that she is now maintained by the said union [*or "parish"*]
at the expense of — per week, and due proof having been given to us of the said
— being the lawful wife [*or "lawful children"*] of the said — [*or "that the said
— is liable to maintain the said —," as the case may be*]: Now we do hereby, in

(o) See *ante*, 772.

(p) The order may be made also on the
ship's husband, or agent of the ship.

(q) This and the two following forms
are given by the act; see *ante*, p. 771.

pursuance of the statute in that case made and provided, order and direct that ——— ["one moiety," or "two thirds," *as the case may be*] of the next payment which shall become due of such pension shall be paid by the said commissioners to the guardians [or "churchwardens and overseers," *as the case may be*] of the said union [or "parish"] of ———, in order that they may retain and apply the same or so much thereof as shall have been actually expended as aforesaid, for the use and indemnity of the said union [or "parish"], paying the overplus (if any) to the pensioner or person entitled thereto. Given under our hands and seals, this ——— day of ———, in the year of our Lord 1842, at ——— in the county aforesaid.

4. *The like Order for Payment of Part of a Greenwich Out-Pension.*

County of } To her Majesty's Paymaster General, Out-pension Office, Tower Hill.
 ———.

Whereas complaint upon oath hath been made unto us, two of her Majesty's justices of the peace acting in and for the said county, by the ——— of the union [or "parish"] of ——— in the county aforesaid, that ——— a Greenwich out-pensioner, No. ———, at the rate of ——— per annum, hath suffered ——— his wife to become chargeable to the said union [or "parish"], and that she is now maintained by the said union [or "parish"] at the expense of ——— per week; and due proof having been given to us of the said ——— being the lawful wife [or "lawful children"] of the said ——— [or "that the said ——— is liable to maintain the said ———," *as the case may be*]: Now we do hereby, in pursuance of the statute in that case made and provided, order and direct, that ——— ["one moiety," or "two thirds," *as the case may be*] of the next payment which shall become due of such pension shall be paid by her Majesty's paymaster general to the guardians [or "churchwardens and overseers," *as the case may be*] of the said union [or "parish"] of ———, in order that they may retain and apply the same, or so much thereof as shall have been actually expended as aforesaid, for the use and indemnity of the said union [or "parish"], paying the overplus (if any) to the pensioner or person entitled thereto. Given under our hands and seals, &c. [*as in the last form, No. 3.*]

5. *The like Order for Payment of any other Pension.*

County of } To her Majesty's Paymaster General.
 ———.

Whereas complaint upon oath hath been made unto us, two of her Majesty's justices of the peace acting in and for the said county, by ——— of the union [or "parish"] of ——— in the county aforesaid, that ———, a person entitled to [*here state whether for pension or allowances in civil, or military service, not as Chelsea or Greenwich out-pensioner*], at the rate of ——— per annum, hath suffered ——— his wife to become chargeable thereto, and that the said ——— is now maintained by the said union [or "parish"] at the expense of ——— per week; and due proof having been given to us of the said ——— being the lawful wife [or "lawful children"] of the said ——— [or "that the said ——— is liable to maintain the said ———," *as the case may be*]: Now we do hereby, in pursuance of the statute in that case made and provided, order and direct, that ——— ["one moiety," or "two thirds," *as the case may be*] of the next payment which shall become due of such pension shall be paid by her Majesty's paymaster general to the guardians [or "churchwardens and overseers," *as the case may be*] of the said union [or "parish"] of ———, in order that they may retain and apply the same, or so much

thereof as shall have been actually expended as aforesaid, for the use and indemnity of the said union [or "parish"], paying the overplus (if any) to the pensioner or person entitled thereto. Given under our hands and seals, &c. [*as in form No. 3.*]

6. *Complaint of an Overseer against a person for not maintaining his Child, under 59 Geo. 3, c. 12, s. 26.*

County of —, } At a petty sessions of the peace, held at — in the said county,
to wit. } the — day of —, in the year of our Lord 1842, before the undersigned justices of the peace in and for the county aforesaid: An application is made to us the said justices by the undersigned E. F., one of the overseers of the poor of the parish of — in the county of —, on behalf of the churchwardens and overseers of the said parish, to have an order on A. B., of — in the county of —, for him to maintain his son C. B., who is poor and unable to work for himself, and has become chargeable to the said parish of T., he the said A. B. being a person of sufficient ability to provide for his said son.

Exhibited before us,

J. P.

L. M.

E. F.

One of the overseers of the poor of the parish of T. aforesaid.

7. *Order, under the same Statute, on a Parent or Child to give Relief, &c. (r)*

Kent, } The order of J. P. and K. P., esquires, two of her Majesties justices of
to wit. } the peace in and for the said county, made at a petty sessions held at — in the said county, the — day of —, in the year of our Lord 1842: Upon an application to us the said justices, at the said petty sessions, by the churchwardens and overseers of the poor of the parish of T. in the said county, to have an order made on A. B., of — in the said county, for him to maintain his son C. B., who is poor and unable to work so as to maintain and support himself, and is chargeable to the said parish of T., he the said A. B. being a person of sufficient ability to maintain and provide for his said son; and the said A. B. having been duly summoned to appear before us the said justices at the said petty sessions, to the end that we might examine into the cause and circumstances of the said application, and the said A. B. having now appeared before us, in pursuance of the said summons, we having heard the parties so complaining, and what the said A. B. has said in answer to the said complaint, do adjudge and determine that the said — is poor and unable to work so as to maintain and support himself, and is actually chargeable to the said parish of T., and that the said — is a person of sufficient ability to maintain and provide for his said son; and therefore we do order that the said — shall and do forthwith, upon notice of this our order, pay or cause to be paid to the churchwardens and overseers of the poor of the said parish of T. for the time being, or to some or one of them, weekly and every week from this present time, the sum of — for and towards the sustentation, relief, maintenance and support of the said —, for and during so long time as the said — shall be chargeable to the parish of T., or until the said — shall be legally directed to the contrary. Given under our hands and seals at — aforesaid, the day and year first above written.

J. P. (L. S.)

K. P. (L. S.)

8. *Information of an Overseer of the Poor against a Parent or Child, for disobeying an Order of Maintenance, &c.*

Kent, } The information and complaint of A. B., one of the overseers of the
to wit. } poor of the parish of T. in the county of Kent, made on oath before us,
J. P. and K. P., esquires, two of her Majesty's justices of the peace in and for the
said county, at a petty sessions held at — in the said county, this — day of —,
in the year of our Lord 1842; who on his oath aforesaid saith, that by an order under
our hands and seals, made at a petty sessions held at — in the said county, the —
day of — last, upon an application then and there made by the churchwardens and
overseers of the poor of the said parish of T., to have an order made on C. D. of —
in the said county, for him to maintain his son F. D., who is poor and unable to work
so as to maintain and support himself, and is chargeable to the said parish of —, the
said C. D. being a person of sufficient ability to provide for his said son, he the said
C. D. was ordered, upon due notice thereof, to pay, or cause to be paid, to the church-
wardens and overseers of the poor of the parish of T. for the time being, or to some
or one of them, weekly and every week from the date of the said order, the sum of
—, for and towards the sustentation, relief, maintenance and support of the said
F. D., for and during so long time as the said F. D. shall be chargeable to the said
parish of T., or until the said C. D. shall be legally directed to the contrary; but that
notwithstanding he the said C. D., on the — day of — last, had due notice of the
said order, and was then and there duly requested by the said A. B. to pay to him the
sum of £ — for the maintenance and support of the said F. D. for two months
ended on the — day of — last, yet the said C. D. wholly refused so to do, and
hath neglected to obey the said order for and during two months; that is to say, from
the — day of — last to the — day of — last, whereby the said C. D. has
subjected himself to the penalty and forfeiture of 20s. for each month, to go and be
employed to the use of the poor of the said parish of T.: And thereupon the said A. B.
prays that the said C. D. may be summoned before us to answer the said complaint,
and to be further dealt with according to law.

A. B.

Taken before us,

J. P.

K. P.

9. *Summons to the Party, in pursuance of the above Information.*

Kent, } To the constable of — in the said county.
to wit. }

Whereas information and complaint on oath have been made to us, J. P. and K. P.,
esquires, two of her Majesty's justices of the peace in and for the said county, that by
an order made at a petty sessions, &c. [*recite the above information to the prayer*]:
These are therefore to require you to summon the said C. D. to appear before us at
— in the said county on the — day of — instant, at the hour of — o'clock
in the — noon of the same day, to answer the said information and complaint, and to
be further dealt with according to law; and be you then there to certify what you shall
have done in obedience to this precept. Given under our hands and seals, this —
day of —, in the year of our Lord 1842.

J. P. (s)

K. P.

(s) The summons may be issued, and the information taken, by one justice.

10. *Warrant of Distress for disobeying the above Order of Maintenance.*

Kent, } To the churchwardens and overseers of the poor of the parish of T. in
to wit. } the said county.

Whereas &c. [*recite the order for the payment of the money, and the breach of it, as in form No. 8*]: And whereas the said C. D. has been duly summoned to appear before us at this present petty sessions, to answer unto the said complaint, but has not shown to us any sufficient cause why he has refused to obey the said order, and why the said penalty of 20s. a month, amounting in the whole to the sum of 40s., should not be levied on his goods and chattels: These are therefore to require you forthwith to make distress of the goods and chattels of him the said C. D. for the said sum of 40s.; and if within the space of four days next after such distress by you taken, the said sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said sum of 40s., to go and be employed to the use of the poor of the said parish of T., and also that you detain your reasonable charges of taking, keeping and selling the said distress, rendering to him the said C. D. the overplus on demand; and if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings be had therein as to law doth appertain. Given under our hands and seals at — aforesaid, this — day of —, in the year of our Lord 1842.

J. P. (L. s.)

K. P. (L. s.)

11. *Commitment for Want of Distress.*

Kent, } To the constable of the parish of — in the said county, and to the
to wit. } keeper of the common gaol of the said county at —.

Whereas by an order, &c. [*recite the order of maintenance and the breach of it, as in form No. 8*]: And whereas the said C. D. having failed to comply with the said order, we the said justices, on the complaint on oath of A. B., one of the overseers of the said parish, issued our summons to the said C. D. to appear before us on the — day of — to show cause why he failed to comply with the said order; but the said C. D. having shown no sufficient cause for his disobedience to the said order, we the said justices, on the — day of —, at — in the county aforesaid, did issue our warrant to the churchwardens and overseers of the poor of the said parish of T., to levy the sum of 40s., being the amount of the penalty so incurred by the said C. D. as aforesaid, by distress and sale of the goods and chattels of him the said C. D., and to apply the same according to law: And whereas it now duly appears unto us the said justices, as well upon the oath of the said A. B., one of the overseers of the poor of the said parish of —, as otherwise, that he the said A. B. has used his best endeavours to levy the said sum on the goods of him the said C. D. as aforesaid, but that no sufficient distress can be had whereon to levy the same: These are therefore to command you, the said constable of — aforesaid, to apprehend the body of the said C. D., and him safely to convey to the common gaol of the said county, at — in the said county, and there deliver him to the keeper thereof, together with this precept; and we do hereby command you, the said keeper of the said common gaol, to receive into your custody in the said common gaol the said C. D., and him there safely keep, without bail or mainprize, until the said forfeiture shall be duly paid; and for your so

doing this shall be your sufficient warrant. Given under our hands and seals at —
aforesaid, the — day of —, in the year of our Lord 1842.

J. P. (L. s.)

K. P. (L. s.)

12. *Order to receive the Rents of Houses or Lands of persons deserting their Families, under 5 Geo. 1, c. 8, s. 1 (s).*

Kent, } Whereas it appears unto us, J. P. and K. P., esquires, two of her Majesty's
to wit. } justices of the peace for the said county, as well upon the complaint and
application of the churchwardens and overseers of the poor of the parish of — in
the said county, as otherwise, that C. D., late of the parish of — aforesaid, yeoman,
hath run away from his place of abode at — in the parish aforesaid, into some other
county or place, and hath left his wife S. and his two children, M. aged three years,
and P. aged two years, or thereabouts, chargeable to the said parish of —, the place
of their last legal settlement; and that the said C. D. hath an estate situate at —,
consisting of a freehold messuage and one acre of freehold land, which should ease the
said parish of the said charge, in whole or in part: We do therefore hereby authorize
and command you, the said churchwardens and overseers of the poor of the said parish
of —, to receive the annual rents and profits of the said messuage and land until
further order be made respecting the same, for and towards the discharge of the said
parish for providing for and bringing up the said wife and children of the said C. D.;
and you are hereby required to appear with this warrant at the next quarter sessions of
the peace to be holden for the said county at — in the county aforesaid, that this
order may be then and there confirmed, according to the directions of the statute in
that case made and provided. Given under our hands and seals at — in the said
county, the — day of —, 1842.

J. P. (L. s.)

K. P. (L. s.)

IV. OF THE POOR RATE.

The persons who are to make the rate, and those on whom it is to be made, the property rateable, and the objects of the rate, are all clearly defined by the 43 Eliz. c. 2, s. 1, which is the test of the law upon this subject. By *sect. 1* of that statute, the churchwardens and overseers, or the greater part of them, shall, by and with the consent of *two justices*, raise by taxation of every inhabitant, parson, vicar, and other, and of every occupier of lands, houses, tithes impropriate, proprietors of tithes, coal mines, or saleable underwoods in the parish, in such competent sums as they shall think fit, a convenient stock of flax, and other ware and stuff, to set the poor on work, and also competent sums of money for the necessary relief of the lame, impotent, old, blind, and such other among them being poor, and not able to work, and also for the putting out poor children to be apprentices.

(s) See *ante*, p. 770.

The subject therefore may be thus divided:—

1. Who are to make the Rate	780	6. Mines	788
2. The mode of making it, and Allowance by the Justices	id.	7. Saleable Underwoods	790
3. Of the Publication	781	8. Stock in Trade, &c.	791
4. Of the Right to take Copies of the Rate	id.	9. In what Place a Party is to be rated	792
5. What Persons are rateable	782	10. In what Proportion the Rate ought to be made	793
6. What Property is rateable, and herein		11. For what Purposes a Rate may be made	795
1. Of Lands and Houses	784	12. Who may be excused from Payment of the Rate	796
2. Rights of Common	id.	13. Of Rating other Parishes in aid..	id.
3. Docks, Canals, Waterworks, &c.	785	12. Of Distraint for the Rate....	797
4. Tolls	786	13. Of Appeal against the Rate	801
5. Tithes	787		

1. Who are to make the Rate.

The duty of making the rate is imperatively cast on the churchwardens and overseers, independently of any concurrence of the inhabitants of the parish; and if this duty is neglected, the Court of Queen's Bench will enforce the performance of it by writ of *mandamus* (t).

2. The Mode of making it, and Allowance.

The rate should be fairly written in a book; and by the 6 & 7 Will. 4, c. 98, s. 2, it is required to be in the following form:—

An Assessment for the Relief of the Poor of the Parish of — in the County of —, and for other purposes chargeable thereon according to law, made this — day of —, in the year of our Lord —, after the rate of — in the pound.

No.	Arrears due, or If excused.	Name of Occupier.	Name of Owner.	Description of Property rated.	Name, or Situation of Property.	Estimated Extent.	Gross estimated Rental.	Rateable Value.	Rate at 6%, in the Pound.
1	<i>l. s. d.</i> 0 0 0	James Smith.	John Green.	Land and Building.	Whiteacre Farm.	<i>a. r. p.</i> 40 0 0	<i>l. s. d.</i> 60 0 0	<i>l. s. d.</i> 55 0 0	<i>l. s. d.</i> 1 7 6
2	0 0 0	Ditto.	Ditto.	House and Garden.	In West Street.	0 1 0	30 0 0	25 0 0	0 12 6
3 {	<i>l. s. d.</i> 0 0 7½ excused }	John Poor.	Ditto.	House.	In Brick Lane.	0 0 0	1 10 0	1 5 0	0 0 7½

(Declaration of overseers and churchwardens.)

We —, do declare the several particulars specified in the respective columns of the above rate to be true and correct, so far as we have been able to ascertain them, to which end we have used our best endeavours.

Thomas Jones, Overseer,
John Thomas, Churchwarden.
&c. &c.

The churchwardens and overseers, or the major part of them, must, before the rate is allowed by the justices, sign the declaration given at the foot of the above form ; otherwise the rate will be of no force or validity.

Allowance by the Justices.—After the rate is thus signed by the churchwardens and overseers, it should be presented for the allowance of two justices, who should sign their names to a memorandum at the foot of the rate, to testify their consent.

The allowance of the rate by the justices is merely a ministerial act, and may be enforced by *mandamus*; and the New Poor Law Act has made no alteration in the authority of the justices in this respect (*u*); and if that is not obeyed, or evaded, they are liable to an attachment for the contempt (*v*). After it has been allowed, it should not be altered by inserting additional names, although with the magistrates' approbation (*x*). A rate for a borough cannot be made by the overseers appointed by the justices of the county, nor be allowed by the justices of the county (*y*). And if a parish comprises the whole of a borough and part of a county, there can only be one rate made for the whole parish (*z*).

3. Of the Publication.

By 17 Geo. 2, c. 3, s. 1, public notice must be given in the church of every rate for relief of the poor, the next Sunday after the allowance; which notice is now, by 7 Will. 4 and 1 Vict. c. 44, s. 2, directed to be affixed to the church door. But if the notice is not given on the *first* Sunday after the allowance, the rate is a nullity, and payment of it cannot be enforced, although not appealed against at the sessions (*a*).

4. Right of Rate Payers to take Copies of the Rate.

By 6 & 7 Will. 4, c. 96, s. 5, any person rated to the relief of the poor of the parish, in respect of which any rate shall be made, may take copies thereof, or extracts therefrom, without paying any thing for the same. And in case the person having the custody of the rate shall refuse to permit any such copy to be taken, he is liable to a penalty not exceeding 5*l.*, recoverable before any justice.

(*u*) *Reg. v. Earl of Yarborough*, 12 Ad. & E. 416.

(*v*) *R. v. Dorchester Justices*, 1 Str. 393; 1 Bla. 637.

(*z*) *R. v. Barrat*, 2 Doug. 465.

(*y*) *R. v. Folly*, 1 Bott. 78.

(*z*) *R. v. Gordon*, 1 B. & Ald. 524.

(*a*) *R. v. Newcomb*, 4 T. R. 368.

5. *What Persons are rateable.*

The persons liable to be rated are the *inhabitants*, and the *occupiers* of certain property specified in the statute of Elizabeth. Every person permanently resident, and sleeping in a parish, is an inhabitant, within the meaning of the statute, and is liable to be rated in respect of other visible property, besides that specified in the statute as the subject of *occupation*; but a person non-resident can only be charged as occupier of one of those descriptions of property.

Owners of Houses under a certain Rent.]—By 59 Geo. 3, c. 12, s. 19, where houses are let to occupiers at a rent not exceeding 20*l.*, nor less than 6*l.*, by the year, for any less term than one year, or on any agreement by which the rent shall be reserved at any shorter period than three months, the inhabitants of the parish in vestry assembled may direct that the owners of such houses, being the immediate lessors of the actual occupiers, shall be assessed to the poor rate, instead of the actual occupiers. And the overseers are required to assess by a fair and equal pound rate the owners of such houses, according to the actual rent, after making a reasonable deduction therefrom, not exceeding in any case one half, the payment of which may be enforced in the same manner as other rates for the relief of the poor.

By *sect. 20*, the goods of the occupier may be distrained for rates, to the amount of the rent actually due, and the occupier, upon payment of the rate, is empowered to deduct the amount out of his rent.

By *sect. 21*, receivers of rents for their own use, or for the use of any corporation aggregate, or for any landlord who is a minor, under coverture, or insane, or who is not usually resident within twenty miles from the parish in which the property is situate, shall be deemed to be the owners.

By *sect. 22*, persons rated as owners may appeal, as any other person rated, and may vote in vestries, in like manner as the inhabitants of the parish.

But by *sect. 23*, no owner, not being an occupier, is to be rated in places where the right of voting for members to serve in parliament depends on the rating.

What constitutes a beneficial Occupation.]—Although a man occupies but a small part of a house, and other persons the remaining parts, yet if those occupations are not distinct from his own, and he has the control or dominion over the property, he is rateable, as

occupying the whole (*b*). But property devoted entirely to public purposes, of which no profit is made by any one, is not rateable (*c*), unless any portions of it are enjoyed exclusively by private individuals; in which case such persons are rateable in respect of the premises which they actually enjoy (*d*). And this distinction applies to all cases of public buildings, whether used as government offices, hospitals, or any other establishments. With respect, however, to places of religious worship, the 3 & 4 Will. 4, c. 30, s. 1 declares that no person is any longer to be rated to church or poor rates for any church, chapel, or premises, or for such part thereof as shall be exclusively appropriated to religious worship, and which, if not of the established church, is duly certified, according to law, for the performance of religious worship.

Charitable Institutions.—In regard to *charitable institutions*, if a party dedicates the whole of a building to charitable purposes, and makes no profit of it, he is not rateable (*e*), although the charitable purposes are to be executed in foreign countries (*f*); but persons living on a charitable foundation for their own benefit are rateable; for there is no exception of lands devoted to charitable purposes, where there is a beneficial occupation (*g*); and no man, by appropriating his lands to an hospital, can exempt them from taxes to which they were subject before, and thus throw a greater burthen on his neighbours (*h*). So, if the trustees of a charitable institution make any profit from the land and buildings, notwithstanding they expend such profit in erecting other buildings, or invest it for the benefit of the charity, they are liable to be rated; as where the trustees of a lunatic asylum originally designed for paupers, finding that the funds of the institution were inadequate to that object, admitted a limited number of other patients on the payment of an annual sum, with a view of providing a surplus from the payments made by this class towards the support of the more necessitous (*i*). And the like, where the trustees of a charity school received 12*l.* from each child towards the expense of his education, although the average annual expense of each child was 20*l.*, and the difference was defrayed from the funds of the institution (*j*).

(*b*) *R. v. St. Mary the Less*, 4 T. R. 477; *R. v. Aberystwith*, 10 East, 354.

(*c*) *Reg. v. Liverpool*, 9 Ad. & E. 435.

(*d*) *R. v. Catt*, 6 T. R. 332; *Ayre v. Smallpiece*, 1 Bott, 154.

(*e*) *Reg. v. Waldo*, 1 Bott, 183.

(*f*) *Reg. v. Wilson*, 12 Ad. & E. 94.

(*g*) *R. v. Catt*, 6 T. R. 332.

(*h*) *R. v. Munday*, 1 East, 584; *R. v. Green*, 9 B. & C. 203.

(*i*) *R. v. St. Giles, York*, 3 B. & Adol. 573.

(*j*) *Reg. v. Sterry*, 12 Ad. & E. 84.

6. *What Property is rateable.*

1. <i>Lands and Houses</i>	784	5. <i>Tithes</i>	787
2. <i>Rights of Common and Fishery</i> ..	id.	6. <i>Mines</i>	788
3. <i>Docks, Canals, Waterworks, &c.</i> ...	785	7. <i>Saleable Underwoods</i>	790
4. <i>Tolls</i>	786	8. <i>Personal Property</i>	791

1. *Lands and Houses.*

The first species of property mentioned in the Statute of Elizabeth is *lands and houses*; and the word “land” includes not only the face of the earth, but everything under it and over it; everything, therefore, is rateable under the denomination of *land*, which implies a possessory interest in the soil itself; as shops, barns, stables, and all other description of buildings, notwithstanding *houses* only are specified in the statute. But a mere easement or incorporeal hereditament, which is incapable of occupancy, as a bare right of way, is not rateable (*k*); unless it be connected with the exclusive occupation of the ground (*l*). Neither are *tolls* rateable, *per se*, except in respect of some local visible property in the soil (*m*); nor *rents*; for then the same property would be twice rated—once, in respect of the tenant’s occupation, and again in respect of the landlord’s rent (*n*).

2. *Rights of Common and Fishery.*

So a mere right of common is not liable to be rated (*o*). But where a right of common is connected with a *freehold interest in the soil*, over which the right of common is exercised, then the parties who derive a profit from the exercise of this right are rateable, not as having a mere right of common, but as the beneficial occupiers of the soil. Thus, where a corporation held in fee certain common lands, which were used as a common of pasture by such resident burgesses as thought proper to stock, under certain restrictions, it was held that those who did stock were rateable to the poor; and that this was not an incorporeal hereditament, but a corporeal tenement (*p*). So where the trustees of a corporation, in whom the aftermarth of a meadow was vested for certain purposes, let it out in pastures at a certain sum per head for cattle to various persons, who had no definitive portion of the aftermarth let to them, the trustees of

(*k*) *R. v. Joliffe*, 2 T. R. 90.

(*l*) *R. v. Bell*, 7 T. R. 598.

(*m*) *R. v. Nicholson*, 12 East, 330; *R. v. Eyre*, 12 East, 416; *R. v. Bell*, 5 M. & S. 221. And see *post*.

(*n*) *R. v. Vandervall*, 2 Burr. 991; *R. v. Welbank*, 4 M. & S. 222.

(*o*) *R. v. Churchill*, 4 B. & C. 750.

(*p*) *R. v. Watson*, 5 East, 480.

the corporation were held rateable in respect of the aftermarth (*q*). In like manner, where a corporation was seised in fee of certain pasture lands, and appointed a ranger to impound cattle trespassing thereon, and for other purposes, and made annually such regulations as to the number of cattle each burgess was to turn on, and the sum to be paid in respect thereof, which money was distributed among the burgesses who did not turn on; the corporation were held to be rateable as the beneficial occupiers of these pastures (*r*). But where the original relation is that of lord and commoners, and there is nothing to show that the interest of the freemen of a corporation over wastes is more than that of commoners, although with large and unusual enjoyments, then it is merely an incorporeal hereditament, and as such not rateable to the poor (*s*).

Right of Fishery.—The same principle applies to a right of fishery, as to a right of common. Thus, although a mere right of fishery, being an incorporeal hereditament, is not the subject of a rate, yet when some territorial right is leased with the fishery,—as where it is to be exercised between certain limits within a manor bordering on a river,—in such case the lessee has been held rateable, as a beneficial occupier of land (*t*).

3. Docks, Canals, Waterworks, &c.

Where lands become of greater annual value, in consequence of particular circumstances attached to them, the assessment may then be made upon the aggregate value, including the amount of the additional profits arising from those circumstances. Thus, where a *weighing machine* was affixed to the freehold of a house whereby it was increased in value, the profits were held rateable, as arising from the house itself (*u*). So the profits of a house, which was let together with a *carding machine*, were held to be rateable, although in this case the machine was not fixed to the premises, but capable of being moved at pleasure (*x*). In like manner, where a house was let by the barrack board at a rent of 15*l*., and also the further sum of 510*l*., for the privilege of using the same as a canteen, the tenant was held rateable as occupier in respect of the aggregate rent (*y*). The principle is, as laid down in a recent case, that real property is to be rated according to its actual value, as combined with the ma-

(*q*) *R. v. Tewkesbury*, 13 East, 155. (*u*) *R. v. St. Nicholas, Gloucester, Cal.*
(*r*) *R. v. Sudbury*, 1 B. & C. 389. 262.
(*s*) *Reg. v. Alnwick*, 9 Ad. & E. 444; (*x*) *R. v. Hogg, Cald.* 266.
1 Per. & Dav. 343. (*y*) *R. v. Bradford*, 4 M. & S. 317.
(*t*) *R. v. Ellis*, 1 M. & S. 652.

chinery attached to it, without considering whether such machinery be real or personal property (*z*). The profits of a mineral spring are considered as part of the produce of the land, and the occupier is rateable for the whole as one estate (*a*); and the New River Company were held to be rateable at Amwell, for their spring there, although the water was distributed, and the profits received elsewhere (*b*). The proprietors of docks (*c*) or canals (*d*), also, if they have an interest in the soil, are rateable for land covered with water, according to its improved value (*d*); and, in like manner, the proprietors of *gas works*, or *waterworks*, are rateable for the beneficial value of the ground in which their pipes and reservoirs are laid (*e*). But, although a *gas company* are thus rateable for the improved value of the land which contains their pipes, they are not rateable to the amount of the profits of their trade, but for a sum equal in amount to that for which the premises would let to other persons willing to carry on the same business; for there is a distinction between the profits of a gas company, and the profits of canals or mineral waters; in the last case the profits are made from natural products arising within the parish, in the other, the profits are obtained by applying the skill and industry of man to capital brought from a distance for that purpose (*f*).

4. Tolls.

Although *tolls*, we have seen, are not rateable *per se*, yet when they are received in respect of some visible property in the soil, *that property* may be rated in proportion to the amount of the tolls received from it. Thus, where tolls are paid for passing a bargeway, or towing path, the way is rateable for those profits (*g*), if the tolls are received in the same parish. But a lessee of market tolls in gross, not incident to the soil, and where the party is not the lessee of the stallage, is not rateable for the tolls (*h*).

But where tolls are appropriated entirely to public purposes, they are not then the subject of a rate; thus, where the corporation of Liverpool had been rateable and rated to the relief of the poor, in respect of town and anchorage dues before the statute of 5 & 6

(*z*) *Reg. v. Guest*, 7 Ad. & E. 951.
 (*a*) *R. v. Miller*, 2 Cowp. 619.
 (*b*) *R. v. New River Company*, 1 M. & S. 503.
 (*c*) *R. v. Hull Dock Company*, 1 T. R. 219; 5 M. & S. 394.
 (*d*) *R. v. Trent and Mersey Navigation*, 1 B. & C. 545.
 (*e*) *R. v. Shrewsbury Paving Trustees*,

3 B. & Adol. 216; *R. v. Bath*, 14 East, 609; *R. v. Rochdale Waterworks Company*, 1 M. & S. 634.
 (*f*) *R. v. Birmingham Gas Company*, 1 B. & C. 506.
 (*g*) *R. v. Mayor of London*, 4 T. R. 21.
 (*h*) *R. v. Bell*, 5 M. & S. 221.

Will. 4, c. 76, for the regulation of municipal corporations, it was held, that the 92d *sect.* of that act, by appropriating all the corporate funds to purposes of a public nature, excepted those dues from further rateability (*i*). But where a party has any private interest in tolls, however precarious and uncertain, and although no actual benefit may be derived from them, he is then rateable in respect of the tolls. Thus where a company, incorporated by act of parliament for rebuilding a public bridge, were enabled to raise a capital stock by shares, and the dividends were limited to seven and a-half per cent on the shares, and the excess was to be applied to paying off the subscribed capital, and to raising a fund for discharging mortgage debts and repairing the bridge, after which the tolls were to cease; it was held, that, although the tolls were in fact absorbed by the payment of interest to mortgagees, the liquidation of debts, and the expense of repairs, leaving nothing for the payment of any interest or dividend to the shareholders, the company were nevertheless rateable to the relief of the poor, in respect of the bridge and the land occupied by it (*k*).

5. *Tithes.*

The next species of property specified in the Statute of Elizabeth is, "tithes impropriate and propriations of tithes." Every parson or vicar is chargeable in respect of his tithes, and is rateable as occupier of them, although he does not receive them in kind, but lets to each parishioner his own tithes (*l*). So, in the case of a composition or *modus*, the parson is still chargeable as the occupier of the tithes (*m*); although, in strictness of language, there cannot be an actual occupier of tithe, tithe in its nature not being the subject of occupation. In like manner, the lessee of tithes from the lay impropiator, although the lessee compounds for them with the respective occupiers of the lands within the parish, is rateable as occupier of the tithes (*n*). If a party is entitled to the tithe of all *fish* caught in the parish, he is rateable in respect thereof; and oblations, and other offerings, which constitute the rectorial or vicarial tithes, are also rateable (*o*). The same principle of rating applies to tithes, as to lands; and though many of the deductions required to be made from the rateable value of property are not commonly incident to tithes,

(*i*) *Reg. v. Mayor of Liverpool*, 9 Ad. & E. 455.

(*k*) *Reg. v. Blackfriars Bridge Company*, 9 Ad. & E. 828.

(*l*) 16 Vin. Abr. 427.

(*m*) *R. v. Lambeth*, 1 Str. 525.

(*n*) *Chanter v. Glubb*, 9 B. & C. 479.

(*o*) *R. v. Carlyon*, 3 T. R. 385.

still there are deductions sufficiently similar in their nature, so far as the question of principle is concerned. The vicar of a parish, therefore, receiving composition for small tithes, is to be rated on such receipt in the same way as the occupier of land, that is, on the sum for which the same would let, free from tenant's rates and taxes and ecclesiastical dues (*p*).

Where the tithes are *extinguished* by an inclosure act, and a corn rent is given in lieu of them, the rector is liable to be rated in respect of the rent (*q*); but the land tax, and the ecclesiastical dues chargeable upon the rectory, ought to be deducted from the amount (*r*). If the tithes, however, are not extinguished, but transferred by the inclosure act to the owners of lands in the parish, who are directed to pay an annuity to the parson instead, in that case the parson is not rateable in respect of such annuity (*s*). And when an inclosure act provides, that the corn rent in lieu of tithes shall be "free from all taxes and deductions," there the rector or tithe owner will not be liable to be rated in respect of the rent (*t*).

But by 6 & 7 Will. 4, c. 71, the new Act for Commutation of Tithes, it is provided by *sect.* 69, that every rent charge under that act, payable in lieu of tithes, shall be subject to all parochial rates, in like manner as the tithes commuted for such rent charge were theretofore subject.

6. *Mines.*

"Coal mines" are the next description of property mentioned in the statute; and they are rateable in the hands of an occupying tenant, although he himself derive no profit from working them, provided they produce value to the owner (*u*). But when the mine itself is exhausted, and the subject-matter of profit is gone, then the mine is not rateable, although the rent, which was calculated upon the probable average produce of the whole term, be still payable (*x*).

With respect to other mines it has been held, that the expression "coal mines" in the statute of Elizabeth expressly excludes mines of any other sort, as much as if they had been excepted (*y*), and that *lead* and *iron* mines are therefore not rateable in the hands of the occupier (*z*). Nor are the owners of mines, although inhabitants,

(*p*) *Reg. v. Capel*, 12 Ad. & E. 382. 274; *Chatfield v. Ruston*, 3 B. & C. 863.
 (*q*) *R. v. Boldero*, 4 B. & C. 467.
 (*r*) *R. v. Joddrell*, 1 B. & Adol. 403;
R. v. Westow, 5 Adol. & E. 250.
 (*s*) *R. v. Great Humbleton*, 1 Adol. & E. 145.
 (*t*) *Mitchell v. Fordham*, 6 B. & C. 507.
 (*u*) *R. v. Parrott*, 5 T. R. 593.
 (*x*) *R. v. Bedworth*, 8 East, 387.
 (*y*) *R. v. Sedgely*, 2 B. & Adol. 65.
 (*z*) *Governor and Company for Smelting Lead v. Richardson*, 3 Burr. 1341; *R. v. Cunningham*, 5 East, 478.

rateable in respect of such property, when they receive a mere pecuniary rent from the occupier (*a*). But if the owner of a mine reserves part of the ore itself, as the consideration for working it, he is then rateable, not as the occupier of the mine, but as the occupier of land; the principle being, that where a person receives without risk part of the produce extracted from the bowels of the earth, he is an occupier of land; but where he merely receives a rent or money payment, he is not an occupier (*b*); and that where the owner, in granting the lease of a mine, reserves any portion of the natural produce, the reservation operates as an exception out of the demise, and is not in the nature of a rent (*c*). Where, however, the owner reserves a portion of the lead to be smelted from the ore, then, this being not a reservation of the mineral in its natural and primitive state, but of a metal produced from that mineral by the laborious and expensive process of smelting, the reservation has been considered to operate, not as an exception of any part of the thing demised, but in the nature of a render of *rent* (*d*), in respect of which, we have seen, the landlord is not rateable.

Lime works (*e*), *slate works* (*f*), and *potter's clay pits* (*g*), according to the general mode of working them, are not to be considered as *mines*; consequently the occupier is rateable for this description of property. But whether any excavation in the earth be a mine, or not, depends not on the particular substance obtained from it, but upon the mode in which it is worked; and this is a question of fact entirely for the sessions (*h*). Therefore, where *limestone*, *potter's clay*, or any other minerals, are obtained by sinking shafts perpendicularly down to the stratum, which lies considerably below the surface of the ground, and then working the stratum by roads and gate-

(*a*) *R. v. Tremayne*, 4 B. & Adol. 162.

(*b*) *R. v. Gall*, 2 Cowp. 451; *R. v. St. Agnes*, 3 T. R. 480; *R. v. Baptist Mill Company*, 1 M. & S. 612.

(*c*) *R. v. St. Austell*, 5 B. & A. 693.

(*d*) *R. v. Earl of Pomfret*, 5 M. & S. 139.

(*e*) *R. v. Altherbury*, 1 East, 534.

(*f*) *R. v. Woodland*, 2 East, 164.

(*g*) 8 East, 528.

(*h*) *R. v. Dunsford*, 2 Ad. & E. 568.

Upon any question of this kind, Lord Denman said, in the case referred to, "the sessions must apply to it the information which they possess, and their knowledge of the English language." But whether the excavation be a *mine*, or a *quarry*, will be sometimes a difficult question of fact, although the greatest master of the

English language be referred to by the sessions for a guide in this respect. Dr. Johnson defines a *mine* to be "a place or cavern in the earth, which contains metals or minerals;" and a *quarry* he describes as "a stone mine, a place where they dig stones;" so that according to this definition, "*mine*" and "*quarry*" would seem to be synonymous terms. They are certainly not so, however, in common parlance; a *mine* in general signifying a *hollow hidden* space in the bowels of the earth, which is usually accessible only by a shaft from above; and a *quarry* denoting an extended *open* pit or excavation, where the labourers can work by daylight, and which is commonly approachable by an open road, forming an inclined plane, for carts and carriages.

heads, and raising the stone or clay to the surface by machinery, or carrying it by a tunnel under ground,—this being the exact description of the usual mode of mining, the lime pit or clay pit so formed and worked must be considered as a mine, and consequently not rateable to the relief of the poor (*i*). If a mine, or any other description of property not rateable, is rated conjointly with land or other property which is rateable, the rate being bad in part is bad for the whole, and will be quashed (*h*).

7. *Saleable Underwoods.*

This is the last description of property specified in the statute of Elizabeth. The term “saleable underwoods” includes such only as are intended for *sale*, in contradistinction to such as are to supply the land with estovers for fuel and other purposes of the estate. It is not necessary that the underwoods should be severed from the land, in order to form the subject of the rate; for where they are only cut down once in twenty-one years, the property is at all times rateable, according to the improvement in its value, or the rent which might fairly be expected from it (*l*). But where firs and larch were planted with oaks, for the purpose of sheltering the latter, and were cut from time to time as the oaks grew larger and required more space, but when once cut did not grow again, these, although some of them yielded a profit by sale, were held not to be *saleable underwoods*, within the stat. of Eliz.; the primary object of planting them being to protect the oaks, and not to derive a profit from them, *per se*, by sale (*m*). And it is very doubtful whether firs and larch, although planted for the express purpose of sale, will form the proper subject of a rate; if they are not cut till they attain a certain height, as thirty or forty feet for instance; for they can then hardly be said to come within the meaning of the term *underwood*, which is generally applied to a species of wood which grows expeditiously, and sends up many shoots from one stump, the root remaining perfect, and producing new shoots, and so yielding a succession of profits; while firs and larch, when once cut, die in the ground, and produce no shoots, and consequently there is no succession of profit, which is contemplated by the statute in reference to other species of rateable property.

(*i*) *R. v. Selgely*, 2 B. & Adol. 65; *R. v. Welbank*, 4 M. & S. 222.
R. v. Brettel, 3 B. & Adol. 424. (*l*) *R. v. Mirfield*, 10 East, 219.
(*k*) *R. v. Cunningham*, 5 East, 478; (*m*) *R. v. Ferrybridge*, 1 B. & C. 375.

And where a wood consisted of oaks grown from old stools, with a few ash, alder, and beech trees, and had not been felled for fifty years until three years before it was rated, and during the last three years the owner had annually cut the worst shoots, selling the poles by the dozen for colliery purposes and firewood, and the bark by the ton, and the wood was also occasionally waste-weeded to improve the plantation; it was held that this wood was not saleable underwood, within the 43 Eliz. c. 2 (*n*).

8. *Personal Property.*

The stock in trade, and other personal property of an *inhabitant* of a parish, is rateable, if it produce a profit (*o*); but it must be local, visible property within the parish (*p*). Therefore money placed at interest, or invested in the public funds, is not the subject of a rate (*q*). Neither is any party rateable for the earnings of his mere personal labour; as an attorney for his fees and profits (*r*); or any public officer, or private person, for his pay or salary (*s*). Household furniture, also, is not rateable, as it is not productive of profit (*t*). Farming stock is not rateable; for it is included in the profits of the land cultivated with it (*u*). But ships are rateable in the parish, which is their home (*x*), although they may be at sea when the rate is made (*y*). As a party, however, is only rateable for personal property in respect of his *inhabitaney*, if he does not reside in the parish, but carries on business there merely by his foreman and other servants, he is then not rateable for his stock in trade (*z*); and where only one of several partners resides there, he cannot be rated for more than his share of the partnership property (*a*).

Notwithstanding, however, the cases above referred to, it has been seldom the practice to rate a party for his stock in trade or other personal property. And the practical difficulties attached to the subject, in showing that the property is productive, in proving the amount of the sums for which the rate ought to be made, and in including in the rate every person possessed of personal property yielding profit, are so insuperable, that it may possibly be a matter

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| <p>(<i>n</i>) <i>Iteg. v. Narberth North</i>, 9 Ad. & E. 815.
 (<i>o</i>) <i>R. v. Darlington</i>, 6 T. R. 468;
 <i>R. v. Ambleside</i>, 16 East, 380; <i>R. v. Dursley</i>, 6 T. R. 53.
 (<i>p</i>) <i>R. v. Andover</i>, Cowp. 550.
 (<i>q</i>) <i>R. v. White</i>, 4 T. R. 771.
 (<i>r</i>) <i>R. v. Sturtifant</i>, 7 T. R. 60.
 (<i>s</i>) <i>R. v. Shafleet</i>, 4 Burr. 2011; <i>R.</i></p> | <p><i>v. White</i>, 4 T. R. 771.
 (<i>t</i>) 4 T. R. 771.
 (<i>u</i>) <i>Reg. v. Barking</i>, 2 Ld. Raym. 1280.
 (<i>x</i>) <i>R. v. White</i>, 4 T. R. 771.
 (<i>y</i>) <i>R. v. Sheppard</i>, 1 B. & Ald. 109;
 <i>R. v. Jones</i>, 8 East, 457.
 (<i>z</i>) <i>R. v. North Curry</i>, 4 B. & C. 953.
 (<i>a</i>) <i>R. v. Gosse</i>, 7 B. & C. 60.</p> |
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worthy the consideration of the legislature, whether the vexatious proceedings that are necessarily consequent on this mode of rating are overbalanced by any benefits derived from it; more especially as the Poor Law Commissioners have lately issued instructions to parish officers to rate personal, as well as other property.

7. *In what Place the Party is to be rated.*

No person can be rated in respect of any property, either real or personal, whether as inhabitant or occupier, unless the property is locally situate and yields a profit or is otherwise beneficial to the party in the parish in which the rate is made. For *real property* he may be rated, as *occupier*, whether he inhabit the parish or not; but, in respect of *personal property*, we have already seen he cannot be rated, unless he is personally resident (*b*). The proposition, as to the *situation* of the property, is exemplified by the following case. A stratum of coal lay in parishes A. and B., and was worked in both, but all the coal was brought to the surface by a shaft in A.; and it was held, that the occupier could not be rated in A. for that portion of the coal which was gotten from the part of the stratum situate in B (*c*). So, the proprietors of an inland navigation, which runs through several parishes, are rateable in every parish through which the navigation passes, not for the entire amount of their tolls received by them in any one parish, but for that share of the profits yielded by such portion of the canal as lies in the parish, or, in other words, for the amount of tonnage dues actually earned there, although received elsewhere (*d*). And the same principle applies to the case of a *bridge*, and the *pipes* of *water* and *gas* companies (*e*).

The owner of a *lighthouse*, who does not reside in the parish where it stands, is not rateable for the tolls, if they are not received in the parish, or paid by vessels coming within it; for the subject-matter of the rate has no locality within the parish (*f*); nor can the occupier of the lighthouse, if a mere servant, be rated for the building, for it is the occupation of the master by the servant, and not the occupation of the servant himself (*g*). And where the non-resident owner

(*b*) *R. v. North Curry*, 4 B. & C. 953.

(*c*) *R. v. Foleshill*, 2 Ad. & E. 593.

(*d*) *R. v. Kingswinford*, 7 B. & C. 236;
R. v. Milton, 3 B. & Ald. 112; *R. v. Palmer*, 1 B. & C. 546; *R. v. E. of Portmore*, id. 551; *R. v. Trent and Mersey Navigation*, id. 545.

(*e*) *R. v. Burnes*, 1 B. & Adol. 113;

R. v. Bath, 14 East, 609; *R. v. Rochdale Water Company*, 1 M. & S. 634; *R. v. Oxford Canal Company*, 10 B. & C. 163; *R. v. Birmingham Gas Company*, 1 B. & C. 506.

(*f*) *R. v. Tynemouth*, 12 East, 46;
R. v. Reboue, 1 Bott, 142.

(*g*) 12 East, 46.

of a lighthouse was rated as the occupier for such an annual sum as it would be worth, if let together with the tolls to a third person, it was held, under the above circumstances, that as the tolls did not arise from the building, nor from any thing of necessity connected with it, the rate ought to be reduced to the value of the building, if let by itself (*h*).

Ships can only be rated in the parish which is their home, that is, where they are registered, and where their cargoes are usually received and delivered, and where they lay when unemployed. Therefore, where a vessel is never locally within the parish where the owner resides, although the profits be there received by him, he is not liable to be rated for the vessel (*i*).

By 17 Geo. 2, c. 37, when waste lands, which were formerly fen and marsh, are drained and improved, and the parish to which they belong cannot be ascertained, the occupiers thereof, or of houses built thereon, tenements, tithes arising therefrom, mines therein, and saleable underwoods thereon growing, are to be rated to the parish that lies nearest to such lands. And if any dispute shall arise, as to what parish or place they ought to be rated to, the justices in quarter sessions shall, after due notice given to the persons interested, and to the parishes and places abutting or adjoining such lands, cause them to be assessed as they shall think meet.

8. *In what Proportion the Rate ought to be made.*

There is no general rule, as to the mode of assessing houses and lands; the proportion must ever depend upon local circumstances. But there may be good reason to make a difference in the proportion of the assessment on these two descriptions of property; as there are several charges incident to houses, which do not fall on lands, to lessen their yearly value (*h*). Circumstances also may vary the value of different estates; therefore, unless a rate be manifestly unequal, the Court of Queen's Bench will presume it to be equal (*l*). But, whatever be the proportion of rating in a parish, whether to the full annual value of the property, or otherwise, the rate must be equally made on all persons; there cannot be one medium of rating for one class of persons, and another for another class. Therefore, where it appeared that an occupier of property was rated to the full

(*h*) *R. v. Fouke*, 5 B. & C. 814; *R. v. Coke*, id. 797.

(*i*) *R. v. Sheppard*, 1 B. & Ald. 109.

(*k*) *R. v. Brognam*, 4 Burr. 2491; *R. v. Sandwich*, 1 Bott. 115.

(*l*) *R. v. Butler*, 1 Bott. 114.

annual value of every thing that he possessed, while other inhabitants were not rated at a third of their estates, the rate was ordered to be quashed (*m*). We have already seen, that a party may be rated according to the improved value of the property he occupies. Rent (*n*), therefore, is not a certain criterion of value; though, where the property is actually demised, it is a reasonable criterion, unless some source of increased profit be shown as a reason for adopting a different measure of value (*o*). But the amount of the land tax at which a party is assessed is not any rule for the assessment of the poor rate (*p*).

The rule for rating canals passing through several parishes is this. If there is the same traffic through the whole line of the canal, every part of the canal will earn an equal proportion of the tolls, and therefore the rate ought to be for a part of the *whole* amount of tolls earned along the whole line of the canal, in proportion to the length of the canal in each particular parish. But where the traffic on the canal is greater in some parishes than others, and consequently the amount of tonnage dues vary which are payable in the several parishes,—in this case, the rate must be calculated on the amount of tonnage dues actually earned in each parish, and not for a part of the gross amount of tolls earned throughout the whole line in proportion to the length of the canal in the several parishes (*q*). But in fixing the amount of the rate, the sum paid by the proprietors of the canal for the poor rate, the expenses of collecting the tolls, of repairing the banks of the canal, and of supplying it with water, ought to be deducted from the gross amount of the tolls (*r*).

In estimating the annual value of property, in general, the right principle has been defined to be, the rent which a tenant would give, he paying the poor rates and the expenses of repairs, and the other annual expenses necessary for making the subject of occupation beneficial, allowing a reasonable deduction from the rent towards the expenses of preserving or restoring the subject of occupation (*s*). And this principle has been recognized by the legislature in the recent statute to regulate parochial assessments. For now, by the 6 & 7 Will. 4, c. 96, s. 1, no rate for the relief of the poor shall be allowed by any justices, or be of any force, which shall not be

(*m*) *R. v. Mast*, 6 T. R. 154.

(*n*) *R. v. Skingle*, 7 T. R. 549.

(*o*) *R. v. Chaplin*, 1 B. & Adol. 926.

(*p*) *R. v. Clerkenwell*, 1 Bott. 111.

(*q*) *R. v. Kingswinford*, 7 B. & C. 236.

(*r*) *R. v. Oxford Canal Company*, 10 B. & C. 163.

(*s*) *R. v. Lower Milton*, 9 B. & C. 819; *R. v. Adames*, 4 B. & Adol. 61.

made upon an estimate of the net annual value of the several hereditaments rated thereunto; that is to say, of the rent at which the same might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation, rent-charge, if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent. But this enactment is not to alter or affect the principles, or different relative liabilities (if any), according to which different kinds of hereditaments are by law rateable. By *sect. 2*, the Poor Law Commissioners may order a new survey and valuation to be taken of the messuages, lands, and other hereditaments liable to poor rates in any parish; and by *sect. 4*, the persons employed for this purpose may enter upon any lands, to make such survey.

By 17 Geo. 2, c. 38, s. 12, where any person shall come into or occupy any premises, from which any other person assessed shall be removed, or which at the time of making the rate were empty or unoccupied, the person removing, and the person coming in, are liable to pay to the rate in proportion to the time of occupation by each, in the same manner as if the one had not removed, and the other had been originally rated; which proportion, in case of dispute, shall be ascertained by any two justices.

9. For what purposes the Rate may be made.

The original purposes of the rate are defined by the 43 Eliz. c. 2, s. 1, namely, to set the poor on work, and also for the necessary relief of the lame, impotent, old, blind, and such others of the poor as are not able to work, and also for putting out poor children to be apprentices. But these purposes have been extended by subsequent statutes, as by the 12 Geo. 2, c. 29, s. 2, charging the poor rate of every parish with the payment of a certain contribution to the county rate; the 18 Geo. 3, c. 19, ordering the repayment to constables of money expended by them in the removal of vagrants; the 59 Geo. 3, c. 12, giving implied power to apply a portion of the rate for building poorhouses; the 10 Geo. 4, c. 44, charging the poor rates of the metropolitan parishes with the expenses of the police; and lastly, the 4 & 5 Will. 4, c. 76, s. 24, charging the money to be raised for the purpose of building workhouses, and the expenses of the emigration of paupers, on the poor rates of the several parishes. It has been the constant practice, also, to allow the expenses of litigating the questions of settlement, consequent upon the removal of paupers, out of

poor rate (*t*). But, after overseers are out of office, a rate cannot be made to reimburse money paid out by them whilst in office (*u*); neither can an overseer, who is appointed for several successive years, make a rate in the last year to reimburse himself for the preceding years. But by 41 Geo. 3, c. 23, s. 9, if an overseer has expended money for the maintenance of the poor, whilst there was no rate, or whilst an appeal was pending against the rate, the succeeding overseers are required to repay him the amount of the money so expended. The overseers are not entitled to any remuneration for their services (*v*); but we have seen, that where an assistant overseer is appointed under the provisions of the 59 Geo. 3, c. 12, s. 7, he may be allowed a yearly salary out of the poor rate; and the 4 & 5 Will. 4, c. 76, s. 46 also directs the salaries of other paid officers to be paid out of the poor rate. But, though the expenses of a constable in relieving or conveying vagrants may be paid out of the poor rate under the 18 Geo. 3, c. 19, yet the expenses of an indictment for an assault upon him in the execution of his duty are not allowable out of the poor rate, although the prosecution was directed by a magistrate (*x*).

10. *Who may be excused from Payment of the Rate.*

By 54 Geo. 3, c. 170, s. 11, any two justices in petty sessions, on application by any person to be discharged from any rate, and proof of his inability through poverty to pay such rate, may, with the consent of the churchwardens and overseers, or such other persons as are competent to act for the management of the poor, order that such person shall be excused from the payment of such rate, and may strike out his name therefrom.

11. *Rating other Parishes in aid.*

It is further provided by the 43 Eliz. c. 2, s. 3, that if the justices do perceive that the inhabitants of any parish are not able to levy among themselves sufficient sums for the purposes aforesaid, then the justices shall tax, rate, and assess any other of other parishes, or out of any parish within the hundred, to pay such sums to the churchwardens and overseers of the poor parish, for the said purposes, as the justices shall think fit.

(*t*) *R. v. Essex*, 4 T. R. 595.

(*u*) *Towney's case*, 2 Salk. 531; 2 Ld. Raym. 1009.

(*v*) *R. v. Glyde*, 2 M. & S. 323; *R. v. Gwyer*, 2 Ad. & E. 216.

(*x*) *R. v. Seville*, 5 B. & Ald. 180.

A *vill* is within the equity of this statute, although it merely mentions the word *parish* (*y*). The justices in this instance are to make the rate themselves, and cannot delegate their power to the churchwardens and overseers (*z*); and the rate may be made upon any of the inhabitants of a neighbouring parish, the justices not being compelled to put a general tax upon the whole parish (*a*). It must appear upon the order, that the parish rated in aid is within the same hundred as the other parish (*b*). The justices cannot rate a parish within their jurisdiction, in aid of a parish out of their jurisdiction (*c*). The order must be to raise a sum certain, and not to make a rate at so much in the pound (*d*); and it may be imposed for a whole year (*e*), but it must be for a limited period, and not *for so long as the justices shall think fit* (*f*).

If the hundred shall not be thought by the justices able and fit to relieve the parish which is unable to maintain its poor, then it is provided by the same section of the statute, that the quarter sessions may rate in aid any other parish within the county.

12. *Distraining for the Rate.*

By 43 Eliz. c. 2, s. 4, the present or subsequent churchwardens and overseers may, by warrant from two justices, one whereof is of the quorum, levy the rate, and all arrearages of every one that shall refuse to contribute according as they shall be assessed, by distress and sale; and in defect of such distress, two such justices may commit the party to the common gaol, there to remain without bail or main-prize until payment of the said sum.

By 17 Geo. 2, c. 38, s. 7, the goods of any person assessed, and refusing to pay, may be levied by warrant of distress not only in that place for which such assessment was made, but in any other place within the same county or precinct; and if sufficient distress cannot be found in the same county, then his goods may be distrained in any other county; and if he shall find himself aggrieved by such distress, he may appeal to the next quarter sessions of the county where such assessment was made.

By 54 Geo. 3, c. 170, s. 12, the goods of any person neglecting or

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| (y) <i>Anon.</i> 1 Bott, 348. | 348; <i>St. Benedict v. St. Peter's</i> , 11 Mod. |
| (z) <i>St. Mary's v. St. Peter and Paul's</i> | 269. |
| in <i>Marlborough</i> , 2 Str. 1114. | (c) <i>R. v. Holbech</i> , 4 T. R. 778. |
| (a) Comb. 309; 1 Ventr. 350; <i>R. v.</i> | (d) <i>R. v. Telscombe</i> , 1 Str. 314. |
| <i>Boroughfen</i> , 1 Bott, 351. | (e) <i>R. v. Knightley</i> , Comb. 309. |
| (b) <i>Boroughfen v. St. John's</i> , 1 Bott, | (f) <i>R. v. St. Mary's</i> , 2 Str. 700. |

refusing to pay any poor rate, for the space of seven days after it shall have been demanded of him, may be distrained in any parish within the county; and if sufficient distress cannot be found in the same county, then, upon oath thereof made before a justice of any other county, he may indorse the warrant of distress, and the goods of the party may be taken in such other county. But before a distress warrant issues, oath should be made of the refusal of the party to pay the rate, and he ought to be summoned before the justices to show cause why he so refuses (*g*). In executing the warrant of distress, the officer is not justified in breaking outer doors (*h*).

The proceedings to enforce the payment of a poor rate may be as follow:

1. *Information for Non-payment of a Poor Rate, made before one Justice, previous to a Summons to appear before two others (i).*

County of } The information and complaint of A. B., overseer of the poor of the
 ———. } parish of ——— in the said county, made on oath before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, this ——— day of ——— in the year of our Lord ———, who says that in and by a rate and assessment made, assessed, allowed, and published, according to the statutes in that case made and provided, C. D. an inhabitant and occupier [or "occupier" only, if such is the case,] of premises [as the case may be,] in the said parish of ———, was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year [or "the last year," as the case may be,] in the sum of £——, and that the said sum hath been lawfully demanded of the said C. D., who hath refused and doth refuse to pay the same: Whereupon the said A. B. prays that the said C. D. may be summoned to answer the complaint before two of her Majesty's justices of the peace for the said county.

Taken before me,
 J. P.

2. *The like Information against several persons, in a printed Form, for Non-payment of several Rates.*

Kent, } Be it remembered, that on this ——— day of ——— in the year of our Lord
 . to wit. } 1842, at ——— in the parish of ——— in the said county of ———, A. B., one of the overseers of the poor of the parish of ——— in the said county, cometh before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, and giveth me to understand and be informed, that the persons hereinafter named, being inhabitants and occupiers of houses and lands in the said parish, were severally and respectively duly assessed for and towards the necessary relief of the poor of the said parish, by a rate or assessment made, assessed, allowed, and published, according to the statutes in that case made and provided, on the respective times inserted

(*g*) *Tracey v. Talbot*, 2 Salk. 532; *R. v. Benn*, 6 T. R. 198.

(*h*) *Bell v. Oakley*, 2 M. & S. 259.

(*i*) By 3 Geo. 4, c. 23, s. 2, one justice may receive the complaint, and also issue the summons returnable before two.

at the top of the several and respective money columns hereinafter following, in the several and respective sums of money set in figures in such money columns opposite to their several and respective names; and that he hath demanded of and from the said several persons respectively the said several and respective sums of money, and that they have severally and respectively refused and neglected, and still do refuse to pay the same: Wherefore the said informant humbly prays, that the said several persons may be summoned to appear before two of her Majesty's justices of the peace in and for the said county, to show cause why they severally and respectively refuse to pay the several and respective sums so demanded from them as aforesaid; and why a warrant should not be granted to make distress for the same.

Exhibited before me the day and year first }
above written. }

Rate made the — day of —.	Rate made the — day of —.	Rate made the — day of —.	Total.

3. *Summons on Non-payment of Rate.*

County of } To C. D., of the parish of — in the said county, yeoman.

We, whose names are hereunto set and seals affixed, two (k) of her Majesty's justices of the peace in and for the said county, do hereby summon you personally to appear before us, at the house of — in — in the said county, on — the — day of — at the hour of — in the forenoon of the same day, to show cause why you refuse to pay the sum of — duly rated and assessed upon you in the rate or assessment made for the relief of the poor of the said parish for this present year; otherwise a warrant of distress for levying the same, as the law directs, will be made against you. Given under our hands and seals the — day of — in the year of our Lord 1842.

4. *Warrant of Distress thereupon.*

County of } To the churchwardens and overseers of the poor of the parish of
— } — in the said county.

Whereas in and by a rate and assessment, dated the — day of —, made, assessed, allowed, and published, according to the statutes in that case made and provided, C. D., an inhabitant and occupier of a house in the said parish of —, was duly rated and assessed, for and towards the necessary relief of the poor of the said parish for this present year, in the sum of £—: And whereas it duly appears unto

(k) See note, ante, p. 708.

us, two of her Majesty's justices of the peace for the said county, as well upon the oath of A. B., overseer of the poor of the said parish, as otherwise, that the said sum of £ — hath been lawfully demanded of the said C. D., and that he the said C. D. hath refused and doth refuse to pay the same: And whereas the said C. D., having appeared before us in pursuance of a summons for that purpose, hath not showed to us any sufficient cause why the same should not be paid: [or "whereas it hath been duly proved to us upon oath, that the said C. D. hath been duly summoned to appear before us the said justices, to show cause why the same should not be paid, but he the said C. D. hath neglected to appear, according to such summons, and hath not showed to us any sufficient cause why the same should not be paid:"] These are therefore to require you forthwith to make distress of the goods and chattels of him the said C. D.: And if, within the space of [four] days next after such distress by you taken, the said sum, together with reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said sum of £ —, and also your reasonable charges of taking, keeping and selling the said distress, rendering to him the said C. D. the overplus on demand: And if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein as to law doth appertain. Given under our hands and seals this — day of — in the year of our Lord —.

J. P. (L. S.)

K. P. (L. S.)

5. *Overseer's Return of Want of Distress, to be indorsed on the Back of the Warrant.*

County of } A. B., one of the overseers of the poor of the within named parish
—, } of —, maketh oath this — day of — in the year of our Lord
—, that he has used his best endeavours to levy the sum in the within warrant mentioned on the goods and chattels of the said C. D., but that no sufficient distress can be found whereon to levy the same.

Sworn before us, two [or "me, one"] of her
Majesty's justices of the peace in and for the }
county of —.

6. *Commitment thereon, where no Distress can be found (1).*

County of } To the constable of the parish of —, and to the keeper of the
—, } common goal at — in the said county.

Whereas in and by a rate and assessment made, assessed, and published, according to the statutes in that case made and provided, C. D., an inhabitant and occupier of premises in the said parish of —, was duly rated and assessed for and towards the necessary relief of the poor of the said parish for this present year, in the sum of —: And whereas it duly appears unto us, J. P. and K. P. esquires, two [or "unto me (m), J. P. esquire, one"] of her Majesty's justices of the peace in and for the said county, as well upon the oath of A. B., overseer of the poor of the said parish of —, as otherwise, that the said sum of — has been lawfully demanded of the said C. D., and

(1) See *ante*, p. 797; 43 Eliz. c. 2, s. 4.

(m) By 3 Geo. 4, c. 23, s. 2, after adjudication by two justices, the subsequent

proceedings to enforce obedience thereto may be enforced by either of such justices, or any other justice.

that the said C. D. hath refused and doth refuse to pay the same: And whereas the said C. D., having appeared before us on the — day of — last in pursuance of our summons for that purpose, did not then show unto us any sufficient cause why the same should not be paid: And whereas on the said — day of — last, we did issue our warrant to the churchwardens and overseers of the poor of the said parish of —, to levy the said sum of £ — by distress and sale of the goods and chattels of him the said C. D., and to apply the same according to law: And whereas it duly appears unto us, as well upon the oath of A. B., overseer of the poor of the parish of — aforesaid, as otherwise, that he the said A. B. has used his best endeavours to levy the said sum on the goods and chattels of the said C. D., but that no sufficient distress can be had whercon to levy the same: These are therefore to command you, the said constable of the parish of — aforesaid, to apprehend the body of the said C. D., and him safely to convey to the common gaol at — in the said county, and there deliver him to the keeper thereof, together with this precept: And we do hereby command you, the said keeper of the said common gaol, to receive into your custody in the said common gaol the said C. D., there to remain without bail or mainprize until payment of the said sum. Given under our hands and seals the — day of — in the year of our Lord 1843.

13. *Of Appeal against the Rate to a Special Session.*

By 6 & 7 Will. 4, c. 96, s. 6, the justices acting for every petty sessions division shall four times at least in every year hold a *special sessions* for hearing appeals against the rates of the several parishes within their respective divisions, and shall cause public notice of the time and place of holding such sessions to be affixed to or near to the door of the church of each parish, twenty-eight days at the least before the holding of the same. At these sessions, which may be from time to time adjourned, the justices shall hear and determine all objections to any rate, on the ground of inequality, unfairness, or incorrectness, in the valuation of any hereditament included therein; which decision shall be binding, unless the party impugning it shall, within fourteen days afterwards, give notice in writing of appeal, and of the matter or cause of such appeal, to the person in whose favour such decision shall have been made, and within five days after such notice enter into a recognizance to try such appeal at the then next quarter sessions. No objection can be inquired into by the justices in special session, unless notice of such objection in writing under the hand of the complainant shall have been given, seven days at least before the day appointed for such special session, to the collector, overseers, or other persons by whom such rate was made. And the justices in special session are not authorized to inquire into the *liability* of any hereditaments to be rated, but only into the true value thereof, and into the fairness of the amount at which the same are rated. But, with this qualification, the justices at the special

session have (by *sect. 7*) all the powers, with respect to such rate, possessed by the justices in quarter sessions, and their order is not removable by *certiorari*. It will be proper, therefore, to ascertain what are the powers of the quarter sessions, and the mode to be pursued by a party who disputes his *liability* to the rate.

To the Quarter Sessions.—If the party appeal to the quarter sessions, under the power reserved to him by this section, it will be sufficient if the recognizance be, within the five days, verbally acknowledged before a justice; and the record of the recognizance may be perfected afterwards from the minute then made (*n*).

By 17 Geo. 2, c. 38, s. 4, if any person shall find himself aggrieved by any poor rate, or shall have any material objection to any person being put on, or left out of, such rate, or to the sum charged on any person therein, or shall find himself aggrieved by any neglect, or thing done or omitted, by the churchwardens and overseers, or by any of the justices, he may, giving reasonable notice to the churchwardens or overseers, appeal to the next sessions for the county, &c. where the parish lies; but, if reasonable notice is not given, then the appeal may be adjourned to the next quarter sessions.

A parishioner has no right of appeal, on the ground that he is not rated, no particular grievance being shown, and it appearing that no rate is laid on similar property in the parish (*o*).

What are the next Sessions.—The *next* sessions means the next to which the party can by possibility appeal, after being aggrieved by the rate; that is, the next practicable sessions at which an effectual appeal can be lodged. Therefore, where one day only intervened between the publication of the rate, and the next immediate quarter sessions, this was held not sufficient for an effectual notice of appeal (*p*).

Of the Notice.—By 41 Geo. 3, c. 23, s. 4, the notice of appeal must be in writing, and signed by the person giving the same, or his attorney, and must be delivered to or left at the places of abode of two of the churchwardens and overseers, and the particular causes or grounds of appeal must be specified in the notice. But, by *sect. 5*, if the parties consent, the sessions may hear the appeal, although no

(*n*) *Reg. v. St. Albans Justices*, 8 Ad. & E. 932.

(*o*) *R. v. George*, 6 Ad. & E. 305.

(*p*) *R. v. Sussex Justices*, 15 East, 206; *R. v. London Justices*, id. 632; *R. v. Coode*, 1 Bott, 281.

such notice be given, or the grounds of the appeal are not stated in the notice.

By *sect. 6*, if the party appeals, because any other person is rated, or omitted, or is rated at any greater or less sum than that at which he ought to be rated, or for any other cause that may require any alteration in the rate with respect to such person, then the appellant must give the notice of appeal not only to two of the churchwardens and overseers, but also to the other person interested. But where the ground of appeal is, that the party is rated in a higher proportion than all the other inhabitants mentioned in the rate, it is not necessary to give notice to all the inhabitants (*q*).

Where an appeal was respited to the following sessions, and the grounds of appeal were stated in the order of respite, no further proof was held necessary of the original notice of appeal (*r*).

Towns Corporate.—By 17 Geo. 2, c. 38, s. 5, in corporations not having four justices (extended by 1 Geo. 4, c. 36, to six justices,) the appeal may be to the next quarter sessions for the county. But, although some of the justices in a town corporate may have an interest in the question, yet if there is the proper number required by the statute, the appeal must nevertheless be to the sessions of the town corporate (*s*).

Before the passing of the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, the borough of B. had a quarter sessions and four justices, but no *non intromittant* clause. The parish of B. was wholly within the jurisdiction of the borough justices, though part only was within the borough, and both parish and borough were within the county of S. By the operation of that act, part only of the parish was included within the new boundary of the borough, and neither the recorder, nor the borough justices, had any jurisdiction over the rest of the parish; and since that act, there were separate quarter sessions, and seven justices, for the borough. The overseers of the parish made one poor-rate for the whole, which was duly allowed by justices, both of the county and borough. An inhabitant and occupier of land, in the part out of the borough, appealed against the rate, on the ground that certain inhabitants of the part within the borough were not rated in respect of stock in trade. Under these circumstances, it was held, that the county sessions had jurisdiction to try

(*q*) *R. v. Suffolk Justices*, 1 B. & A. & Ad. 561.
640.

(*r*) *R. v. Hertfordshire Justices*, 4 B. 513.

(*s*) *R. v. Essex Justices*, 5 M. & S.

the appeal, and to amend the rate, by inserting the stock in trade; for that the county justices had jurisdiction by virtue of the 1 Geo. 4, c. 36, before the passing of the 5 & 6 Will. 4, c. 76; and *sect.* 111 of the latter act excludes their jurisdiction, only, where the borough was before exempt from it (*t*).

Of amending and quashing the Rate.]—By 41 Geo. 3, c. 23, s. 1, upon all appeals from any poor rate, the sessions may amend the rate, either by inserting therein, or striking out, the names of any persons, or by altering the sum charged on any persons, or in any other manner which the court shall think necessary for giving relief, and without quashing or wholly setting aside the rate; which, however, they have still a discretionary power to do. But all sums charged in the rate may be levied and recovered in the same manner, as if no appeal had been made against the rate; and all sums, which any persons shall thus pay, shall be deemed as payments on account of the next effective rate.

By *sect.* 3, however, where the sessions order the rate to be quashed, they may order the sum charged on any person not to be paid, and stop proceedings for the recovery thereof.

By *sect.* 7, if the sessions shall order the name of any person to be inserted, or the sum at which any person is rated to be increased, then the sum, at which such person shall be ordered to be rated or increased, may be recovered in the same manner as if he had been originally named in the rate, and rated at such sum of money.

And, by *sect.* 8, if the sessions shall order the name of any person to be struck out, or the sum at which he is rated to be decreased, they may order any sum, which ought not to have been paid by him, to be returned by the churchwardens and overseers, together with reasonable costs, which may be recovered by distress.—Under this enactment, the application for an order to refund must be made to the same court of quarter sessions which heard the appeal, or, at least, to that court which ordered the rate to be lowered. And therefore, where the sessions confirmed a rate, subject to a case, and the Court of King's Bench sent the rate back to be amended, by reducing the charge on the appellant; and the court below at the Easter (being the next) sessions ordered that sum to be lowered accordingly; an application at the Michaelmas sessions for an order on the overseers to refund the difference between the sum first charged, which the

appellant had paid, and the sum ultimately fixed, was held to be too late (*u*).

It must not be forgotten, under this head of amending or quashing the rate, that the power of the justices in a special session is limited by the 6 & 7 Will. 4, c. 96, s. 6, to an inquiry into the true *value* of any property, and the fairness of the *amount* at which the same is rated, and that they are not authorized to inquire into the *liability* of any property to be rated.

Trial of the Appeal.—If the ground of appeal be, that the appellant has no rateable property within the place, the respondent should first show that he has some property liable to be rated (*x*). And where the appellant disputes merely the *quantum* of the rate, it is not sufficient for the respondent to show that the appellant is in possession of some rateable property within the parish, without also showing some probable ground for the *amount* at which the party is charged in the rate (*y*).

By 54 Geo. 3, c. 170, s. 9, no inhabitant rated or liable to be rated, or wholly or in part maintained or supported by the parish, or executing or holding any office therein, shall be deemed an incompetent witness for or against the parish, in any matter relating to the rates of such parish.

Costs.—By 17 Geo. 2, c. 38, s. 4, the court may award to the party for whom the appeal is determined reasonable costs, as in cases of settlement by 8 & 9 Will. 3, c. 30. But where an appellant countermands his notice of appeal before the sessions, and the appeal is consequently neither *entered*, nor *determined*, the sessions have in this case no authority to award any costs to the respondent (*z*).

Rateability under Local and Special Acts of Parliament.

Exemption from Rate.—Where a statute empowered the proprietor of a canal to take rates in respect of vessels navigating the same, and expressly exempted such rates from the payment of all taxes, rates, &c., it was held that the land occupied by the canal was also thereby excepted from the poor rate (*a*).

Where a statute enacted, that certain lands to be embanked from the river Thames should be free “from all taxes and assessments

(*u*) *R. v. St. Peter's*, York, 4 B. & Ad. 342.

(*i*) *R. v. Newbury*, 4 T. R. 475.

(*y*) *R. v. Topham*, 12 East, 546.

(*z*) *R. v. Essex Justices*, 8 T. R. 583.

(*a*) *R. v. Calder and Hebble Navigation*, 1 B. & Ald. 263.

whatsoever;" it was held that this enactment exempted the occupiers of buildings erected on those lands from the payment of poor's rates, in respect of such occupation (*b*). So where an act establishing a navigation company declared that the company should "not be taxed or assessed for the same, or the profits thereof, at any but a certain place;" and a subsequent act, enabling the company to make other cuts or canals, 'declared "that the intended cuts or canals should be considered and taken as part of the navigation;" it was held that the new cuts or canals were equally exempt from the poor's rate (*c*).

Calculation of Rate—Canals, &c.—By a local act, the soil of a river was vested in trustees of a navigation, who were to receive the profits of such navigation, and apply them in the first instance in repairs and amendments, and in keeping the river navigable, &c. By the same act it was provided that M. should receive, out of the profits of the navigation, so much for every ton navigated on the river; and that B. should receive so much for every ton navigated on the river within his own land situate in the parish of E.; and that the trustees should pay to the person, to whom any shares of the profits should be allotted, in the manner provided by the act, such respective shares yearly, after deducting the costs of repairing and amending the premises, and executing the trusts. Satisfaction for damage to lands, by cutting passages or heightening the waters, was to be paid by the trustees out of the profits of the navigation, before the persons entitled to shares of the profits should receive such shares. The tolls were taken as follows: on vessels using the whole line of navigation 4s.; between a certain point above the parish of W. 3s.; from the beginning to the end of W. 2s. 6d.; from thence to the lower end of the navigation 2s.—Held, 1. That the poor rate payable by the trustees for the part of the navigation in W. was to be estimated, not by the increase of toll taken within W., but by a mileage calculation; the gross amount of toll upon any voyage including W. being distributed evenly over the line travelled, and the amount payable by W. being calculated by the proportion which the length of navigation in W. bore to the whole of the line travelled, whether the voyage extended over the whole length of navigation, or a part of it including W. 2. The expense of repairs being equal through the whole line, that the amount of such repairs was to be deducted on a like mileage calculation. 3. That in estimating the

(*b*) *R. v. London Gas Company*, 8 B. & C. 54.

(*c*) *R. v. Barnby Dun*, 4 Nev. & M. 436.

rateable profits, the compensations to M. and others were not to be deducted; and this, even in the instance of compensation for injury to a mill situate within the parish of W. 4. Also (on the assumption that lands in W. were rated at rack rent, and no more) that ten per cent. was to be deducted from the rateable amount, for the tenant's profit (*d*).

By 10 Geo. 3, c. 114, the company of proprietors of the canal navigation from Leeds to Liverpool were incorporated, and empowered to make a canal, with towing-paths, wharfs, &c., and to impose tolls and duties; and it was enacted that the tolls, &c. should at all times thereafter be exempted from the payment of any taxes, rates, &c., other than such as the land which should be used for the purpose of the navigation would have been subject to. By 23 Geo. 3, c. 47, (for incorporating another navigation with the canal) it was enacted that the several navigations, and the tolls to be taken on the same, should be exempt from any taxes, rates, &c., (as in the former act) and that such navigations should not be subject to any taxes, &c., except such as had been and then were usually charged and assessed thereon; but this was not to exempt any quay, wharf, warehouse, or other house; and the clause in the previous act, excepting the tolls, &c. was declared to be repealed. By 59 Geo. 3, c. cv. for enabling the company to make additional cuts, it was declared that all the clauses in the former acts (except such as had been repealed or were by that act repealed or altered) should extend to the purposes of that act; and that the lands, dwelling-houses, wharfs, quays, warehouses, lock-houses, and other houses of the company, should be rateable to the poor, the lands according to the quantity and quality, and the dwelling-houses, wharfs, &c., according to the nature and respective uses, dimensions and descriptions thereof, and should be assessed in like manner as lands of a like quality, and as dwelling-houses, warehouses, lock-houses, and other houses of like and similar size, nature, dimension, or description in the respective parishes where the same should be situate, were or should be assessed and charged; the rates, duties, and other personal property of the company to be assessed as other personal property in the said parishes. In the parish of Liverpool no personal property was assessed to the poor. Held, 1. That the land in that parish occupied by the canal, basins, and towing-paths, being part of the original line, was to be rated according to the general value borne *at the time*

of the rate by the land immediately adjoining, not excluding the value which such land derived from the vicinity of the canal, but not reckoning the value which such land would acquire, if applied to the purposes of a canal. 2. That the land occupied by cuts and basins, not being in the line prescribed in any of the acts, was to be rated on the same principle. 3. That wharfs and quays adjacent to such cuts and basins were to be rated as similar property adjacent, not excluding the value which such adjacent property derived from the vicinity of the cuts and basins (e).

Where a canal act directed that the company should be rated for all lands and buildings in the same proportion as other lands and buildings lying near the same, and as the same would be rateable if they were the property of individuals in their natural capacity; it was held, that the company were liable to be rated for their lands, &c. only at the same value as other adjacent lands, and not according to the improved value derived from the land being used for the purposes of the canal (f).

Dock Company.]—Where an act for establishing a dock company, after reciting that, by the intended works, certain lands then paying land and parochial taxes would become unproductive for many years, and other lands would consequently be more burdened, enacted that the company, from the time of taking possession of their lands, should become chargeable with “all such land and parochial taxes as the same lands are now or may hereafter be subject to,” and should be liable to pay the same “during the execution of the said works, and for ever thereafter;” and that the former owners should be discharged from such payment; it was held, that the company were never to be rated for the lands at a higher amount, than the value which the lands would have had at the time of rating, if they had continued in the same state as when the act passed, however the profits of occupation might be increased by the company’s works (g).

Gas Companies.]—Where a company, established under an act of parliament, erected in the parish of A. in Cambridge a gasometer and other gas apparatus, and laid down mains and pipes in that and other parishes, and also in extra-parochial land belonging to certain colleges in the University, supplying light by means of such pipes, &c., to the

(e) *Reg. v. Leeds and Liverpool Canal Company*, 7 Ad. & E. 671.

(f) *R. v. Grand Junction Canal Company*, 1 B. & Ald. 289; *R. v. St. Peter*

the Great, 5 B. & C. 473; *R. v. Chelmer and Blackwater Navigation*, 2 B. & Ad. 14.

(g) *Reg. v. Bristol Dock Company*, 1 Ad. & E. N.S. 535.

several parishes and colleges; it was held, that the company were rateable, as occupiers of the land in the different parishes by their apparatus, pipes, &c., and were properly assessed upon the sum which a tenant would pay yearly for the apparatus, pipes, &c., deducting the annual average expense of renovating the same, but not profits of the trade (though profits in trade were not assessed in any of the parishes), and deducting also the annual value of the apparatus and pipes lying in extra-parochial land; and that the resulting amount was to be distributed among the assessments of the several parishes, in proportion, not to the payments made for lights in the respective parishes, but to the quantity of land occupied by the apparatus, &c. in each parish (*h*).

Railways.—By stat. 4 & 5 Will. 4, c. lxxxviii. a railway company were empowered to purchase lands, and construct a railway thereon, passing through several parishes, with warehouses, station-houses, &c. They were empowered also to take certain tonnage tolls, not exceeding a stated amount, for goods and passengers; and to provide locomotive engines, and to receive such sums for the use thereof as the company should fix, in addition to the tolls; and when they themselves carried for their own profit (which a distinct clause enabled them to do) they were to keep a separate account of the tolls which they would have received for the passengers, &c., if they had been carried by other persons; such account to be open to inspection by the overseers of every parish on the line of railway. They were likewise empowered to let the tolls. All persons were to have liberty to use the railway with carriages properly constructed, on payment of the tolls, and subject to the company's regulations. Powers were given to the company to approve or disapprove of the carriages and engines to be used by any persons on the railway, and to make orders for regulating the passage upon, working, and use of the railway, and for prevention of nuisances. The company used the railway according to the act, carrying passengers and goods, and supplying power by means of locomotive engines, for their own profit; and no other person used it for such purposes. Held, that the company were rateable for their land, improved in value by the profits accruing from the railway, &c., at an amount equal to the rent which a lessee would pay, making the same use of the railway as the company did, with the deduction of tenant's rates, &c., expense of repairs, and the other charges mentioned in the stat. 6 & 7 Will. 4, c. 96, s. 1.

(*h*) *Reg. v. Cambridge Gas Company*, 8 Ad. & E. 73.

That the last-mentioned statute did not, in this respect, introduce any new principle of rating. And that an estimate of the company's liability, founded only on the amount chargeable in respect of tolls, and excluding the receipts for carriage of passengers and goods, was erroneous. That the land must be rated in any particular parish according to its actual value there, although such value was owing in a great measure to station-houses, and other works not within the parish. And that the rate in any particular parish was to be estimated by the amount of profit actually earned in that parish, and not by the proportion which the length of railway in that parish bore to its entire length (*i*).

Wharfs.—Where it was provided by a canal act, that lands, dwelling-houses, wharfs, &c. should be rateable to the poor, the lands according to their quality, and the dwelling-houses, wharfs, &c. according to the nature and respective uses thereof; it was held, that land adjoining the canal, which had not been converted into a wharf, could not be rated as such, although timber was permitted to be landed there (*k*).

Personal Property, Ships, &c.—By a local act, 9 & 10 Will. 3, the poor of the town of Kingston-upon-Hull are placed under the management of a corporation established by that act, and are to be maintained by money to be levied “by taxation of every inhabitant, and of all lands, houses, tithes impropriate, appropriation of tithes, and all stocks and estates in the said town, in equal proportions, according to their respective worths and values.” Upon an appeal against a rate made by virtue of this act, it appeared that the rate omitted, 1st, persons not resident in Hull, but having stock in trade there which had produced a specified profit in the last year; 2dly, a tenant of houses which he underlet at a specified profit, the undertenants being rated, but excused from paying on account of poverty; 3dly, owners and part-owners of ships registered at Hull, and trading to and from that port, and within that port at the time when the rate was made. Some of these persons were resident in Hull, others were not. Some profits had been derived from the ships in the preceding year, but the appellants could not show the amount. Under these circumstances it was held, that the act made all personal property rateable, whether the owner were or were not resident in Hull, and that consequently the first and third classes of persons ought to have

(*i*) *Reg. v. South-Western Railway Company*, 1 Ad. & E. N. S. 558.

(*k*) *It. v. Regent's Canal Company*, 6 B. & C. 720.

been included in the rate; and that it was not incumbent on the appellants to show the amount of profit made by the ships,—for that being established they were profitable, they ought not to have been altogether omitted; 2dly, that the tenant of houses underlet, as before mentioned, was not liable to be rated. The Hull Dock Company were rated at the full amount of their profits, without making any deduction for the poor rate; which was held to be wrong; for that the “worth and value” could only be the profits, *minus* the outgoings, and that therefore, supposing other property to be rated at a rack-rent, the poor rate should have been calculated upon such a sum, as would, together with the rate, make up the whole amount of profits (*l*).

Funded Property.—Where a local statute enabled the overseers to assess “all persons having and using stocks and personal estates in the said parish, or having *money out at interest*,” it was held, that stock vested in the public funds was not rateable; for that, as the payment of the principal could never be compelled, it could not be considered as *money out at interest* (*m*).

Beneficial Occupation.—Under a local act (1 & 2 Will. 4, c. xlviii.) the justices of the peace of the county of W. (so described in the act) were authorized to purchase lands, &c., for the erection of a county hall, courts of justice, and lodgings for the judges of assize for the county; and they were to possess the same for the purposes of the act, and to pay for them out of the county rates; but they were not to be individually liable on any contracts. The materials, furniture, &c. were vested in them, and they were enabled to sue or prosecute in respect thereof in the name of the clerk of the peace, the property to be laid as the property of “the justices of the peace for the county of W.” The lands and buildings were vested in them on trust to suffer courts to be held, and other public county business to be transacted there. The buildings were to be insured, repaired, and furnished at the expense of the county. The justices had power to let the judges’ lodgings, making reservation for the use of the judges and magistrates at proper times, and applying the rent to county purposes only. The justices were to be paid by the sheriff such sums as were allowed him by the Exchequer for the accommodation of the judges. The buildings were erected, and applied to the purposes of the act; but the house called the judges’ lodgings was not let. Wine

(*l*) *R. v. Hull Dock Company*, 3 B. & C. 516.

(*m*) *R. v. St. John’s, Maddermarket*, 6 East, 182.

was kept in the house, which was paid for by subscription by the magistrates, and drunk by them at their sessions' dinners; and some of them occupied bed-rooms there during their attendance at sessions, the rooms being appropriated to those who first bespoke them. It was held, under these circumstances, that the justices of W., as a body, were not liable to be rated, as occupiers of the judges' lodgings (*n*).

Where Property rateable.]—Where an inclosure act provided, that certain allotments for rights of common should be deemed to be situate within the townships, wherein the lands lay in respect of which such allotments should be made, but nothing was to affect the right to the coal-mines under them; it was held, that the coal-mines were rateable the same as before the act passed (*o*).

By stat. 43 Geo. 3, c. cxi. the Bristol Dock Company were empowered to purchase lands, and execute certain works, for the improvement of the port of Bristol; and it was enacted, that, within twelve months after the works should be begun, and notice thereof given, certain tonnage duties should be payable to the company for every vessel entering into the port of Bristol. The company, in execution of their powers, deepened the water in the port, so as to form a floating harbour, and they purchased eleven acres of land within the port, and in the parish of Clifton, and made, in that land, an entrance basin to the floating harbour. They also made a second basin in another parish; and all vessels using the floating harbour necessarily passed through one or the other basin. Many, however, entered the port, without going into the floating harbour or either basin. The duties were collected from all vessels entering the port, in various places on the coast, but none within the parish of Clifton. The eleven acres in Clifton were not beneficially occupied, except as they contributed to the earning of port duties. Under these circumstances it was held, that the company were not rateable to the poor in Clifton for the eleven acres, as contributing to the earning of profits which accrued in other parishes (*p*).

ADDENDA TO "POOR Rate."

Page 781. *Mode of making it.*]—The words of the 6 & 7 Will. 4, c. 96, s. 2, declaring that a rate "shall be of no force and validity,"

(*n*) *Reg. v. Worcestershire Justices*, 11 Ad. & E. 57.

(*o*) *R. v. Pitt*, 5 B. & Ad. 565.

(*p*) *Reg. v. Bristol Dock Company*, 1 Ad. & E. N.S. 535.

apply, only, where the declaration at the foot of the form is not signed by the parish officers; not, where the particulars prescribed in the earlier part of the section are deviated from. A rate is bad, which is made for a period for which a rate has already been made, and has not been quashed.—*Reg. v. Fordham*, 11 Ad. & E. 73.

Publication.—When the rate is made for a district within a parish, which district has its own church, and maintains its own poor, the rate is sufficiently published under the 7 Will. 4 & 1 Vict. c. 45, s. 2, if notice of it be affixed on the door of such church, although there be chapelries within the parish having their own respective chapels, all of which belong to the same vicarage with the church. The notice need not be affixed at such chapels, nor at the church of a neighbouring parish in the same town, though the churches nearly adjoin each other, belong to the same vicarage, and are used indiscriminately by the same persons, the one being sometimes frequented by the congregation of the other while that is closed, and although many persons have rateable property in both parishes.—*Reg. v. Marriott*, 12 Ad. & E. 779.

Allowance.—The duty of the justices in allowing a poor rate, since the 6 & 7 Will. 4, c. 96, is not judicial or discretionary, but ministerial only, as it was before the act. And where a rate was in the form prescribed by *sect. 2*, and the schedule, and the justices refused to allow it, because the estimate of the property in the rate did not correspond with a valuation and survey made under *sect. 3*, and because it was not alleged that since the survey and valuation were made, the value of property had been altered, a *mandamus* issued commanding the justices to sign and allow the rate.—*Reg. v. Earl of Yarborough*, 12 Ad. & E. 416.

Page 782. *Beneficial Occupation—Cemetery Company.*—A company incorporated by stat. 1 & 2 Will. 4, c. cx. had power to purchase land for the purpose of a cemetery, to make vaults and catacombs in it, and to sell, in perpetuity, or for a term, the exclusive right of burial therein, subject to the rules and regulations of the company, and to payment of burial fees to them. They were bound to keep the buildings, external walls, and every part of the cemetery in repair. Held, that the company were liable to be rated to the relief of the poor, as occupiers of the whole cemetery, though they had, in fact, sold in perpetuity the exclusive right of burial in the vaults, catacombs, &c. made by them, had ceased to exercise any act of ownership over them after the sale, and had delivered the keys to

the purchasers. And held, also, that the profits arising from such sales ought to be included in the rateable value of the cemetery.—*Reg. v. St. Mary Abbots, Kensington*, 12 Ad. & E. 824.

House of Correction.—The governor of the West Riding house of correction was assessed to the poor for a house and garden within, and parcel of, the prison. The house consisted of ten apartments, nine in the governor's occupation, and the tenth used as a committee room for the magistrates. The governor was obliged by the prison rules to live always within the walls, and nothing more was provided for him than was necessary for his convenient accommodation. The garden was half an acre in extent, contained fruit, flowers, and a greenhouse, and was chiefly used by the governor (the magistrates permitting), but was not specially appropriated to his use, the object of such an area being the health of the prisoners; but the governor used it as a pleasure garden and for his family. Held, that he was not rateable for his occupation of the house or garden.—The matrons and turnkeys also occupied dwellings within the walls, distinct from that of the governors. These persons were obliged, for the purposes of the establishment, to sleep always within the walls. The accommodation was no more than was necessary for the objects for which they were placed in the prison. Held, that they were not rateable for their dwellings. Held, also, that the justices of the West Riding were not rateable for the porter's lodge, &c., and the tread-mill and work rooms within the prison, which works were done by the prisoners, partly for the use of the gaol, and partly for hire, the earnings being carried to the public account.—*Reg. v. Shepherd*, 1 Ad. & E. N. S. 170.

Commissioners for Lighting.—By a local act, commissioners were authorized to provide lamps, &c. and cause them to be lighted for the use of a town, and to levy rates on the tenants and occupiers of houses, tenements, &c. to defray the expenses. By a later act they were authorized, if they saw fit, to manufacture gas for the purpose, and in that case to let out private lamps, &c. to individuals, and supply them with gas, the profits to be applied, first to the expenses of the gas apparatus, and then generally to the purposes of that and the former act. The commissioners accordingly manufactured the gas, and let lamps and supplied them with gas, and applied all the profits to the purposes directed by the acts. Held, that they were not rateable as beneficial occupiers of the gas works; for wherever an act of parliament disposes of the whole of what is raised

for public purposes, there can be no beneficial occupation.—*R. v. Beverley Commissioners*, 6 Ad. & E. 645.

Corporation.—The freemen of the corporation of York, occupiers of houses in M., a separate ward, immemorially enjoyed pasture over the lands of G., and the occupiers of houses in other wards had the same rights over other lands. The corporation appointed pasture masters, who appointed a herdsman to watch the cattle and prevent their straying. The freemen paid for the cattle put on the pastures head-money, fixed by and paid to the pasture-masters, which was applied to the wages of the herdsman and the expense of managing the pastures. By an inclosure act, certain lands were allotted to the corporation in fee, to be exclusively enjoyed by the freemen, occupiers of M., in lieu of their right of pasture, which was abolished, and with the same rights and under the same regulations. The lands were managed, as the common had been before the act, except that the herdsman lived in a cottage on the new land, built from the proceeds of the head-money, for which the poor rate was paid out of the head-money by the pasture-masters. Some of the land was at one time leased by the pasture-masters, which leases had expired, but during their continuance the lessees were rated. A surplus, arising from the rate and the head-money, was laid out in purchasing land, which was vested in the then wardens and pasture-masters in fee, in trust for the freemen, occupiers of M., to be enjoyed as the other land. There was generally a balance much above expenses from the head-money, which was carried to the next year. The corporation received no profit in their corporate capacity, except as above; neither had they or the freemen ever been rated for the land, or right of pasture. Under these circumstances it was held, that the corporation were rateable to the poor for the land vested in them under the act, but not for the land purchased out of the surplus.—*R. v. Mayor, &c. of York*, 6 Ad. & E. 419.

Occupation as Servant.—A servant occupying a house cannot be said to hold it, as servant, if it be not the master's house. Therefore where R., a brewer, engaged L. as clerk at a yearly salary, and agreed to permit him to occupy a certain house as his residence, free from rent, rates, and taxes; and L., after occupying this house for some time, removed to another, for which he agreed with the landlord, but the latter considered R. as his tenant; L. being assessed to the poor rates and window tax, but these, as well as the rent, being paid by R. at the brewery; and L. voted once, in respect of his occupation

of the house, at the election of a borough member; it was held, that L., and not R., was the rateable occupier.—*Reg. v. Lynn*, 8 Ad. & E. 379.

Tolls.—A wooden bridge was constructed across a river, which divided the parishes of W. and A. from each other, one bank and part of the bridge being in W., and the other part in A. The bridge was supported by piles driven into the ground at the bottom of the river, and by abutments of brickwork on each bank. On the A. side of the bridge was a toll-house supported on piles also driven into the soil of the river; and tolls were taken at this house only for carts with merchandize passing the bridge. S. was the owner of the tolls, deriving title from a grant from the duchy of Lancaster. In a document in the reign of Edward the Second, and in other documents down to the time of Charles the First, the tolls were called traverse; and it appeared that the tolls had passed by grants conveying likewise the manor and castle of U., of which S. and those preceding him were also owners; and they had for twenty years performed the repairs of the bridge, including excavations in the soil at the bottom of the river, and the flanking of the carriageway, but had not repaired the carriageway. Held, 1. That this was *prima facie* evidence, that S. had the tolls, as tolls traverse, in respect of ownership of the soil on which the bridge stood. 2. That this was a beneficial occupation by him of land in W., for which he was rateable in W. And 3. That, although the tolls were actually received by E., who paid rent for them to S., under a parol agreement, by which E. contracted with S. for the receipt of the tolls at such rent,—yet that S. was nevertheless the rateable party; since that agreement did not profess to demise the lands; and the tolls, as such, could not pass from him without deed.—*Reg. v. Marquis of Salisbury*, 8 Ad. & E. 716.

Workhouse.—The guardians of an union, formed under the 4 & 5 Will. 4, c. 76, s. 26, comprehending the parish of M., and others, built a workhouse in M. for the employment of the poor under the twenty-third section of that act. Held, that the guardians were rateable in the parish of M., as beneficial occupiers of the workhouse; although it was built on land, which, from the nature of the occupation, had not previously been rated; for, though the occupation was not beneficial to the guardians individually, yet, as the most advantageous mode of relieving their poor, it was an advantage to that body.—*Reg. v. Wallingford Union*, 10 Ad. & E. 259.

Page 782. *Beneficial Occupation.—Corporations.*—The corporation of Exeter, before and after the passing of the 5 & 6 Will. 4, c. 76, the Municipal Corporation Act, was possessed of a canal and towing paths; the tolls and dues of which, after the passing of that act, went into the borough fund. They were mortgaged, but produced more than enough revenue to pay the interest. The canal and towing paths were situate in the parish of E., part of the city of Exeter. Held, that the ninety-second section of the above statute, by appropriating all the corporation funds to purposes of a *public* nature, exempted the tolls and dues from rateability to the poor in the parish of E.—*Reg. v. Exminster*, 12 Ad. & E. 2.

But now, by 4 & 5 Vict. c. 48, s. 1, the municipal corporations named in the schedule to the 5 & 6 Will. 4, c. 76 are rateable to the relief of the poor, in respect of lands, tenements, and hereditaments, being the property and in the occupation of such corporations, as if the same were not corporate property. But where such property lies in any parish, which is situate wholly within the boundaries and limits of a city or borough named in such schedules, and in which city or borough the poor are relieved by one entire poor rate, or in which city or borough the poor within the boundaries or limits thereof, as existing for municipal purposes at the time of passing the act, were then relieved by one entire poor rate, the exemption of such property from rateability continues.

And by *sect. 2*, any of such municipal corporations being in the occupation of such lands, tenements, and hereditaments as are before described, shall be deemed and taken to be beneficial occupiers thereof, for all the purposes of rating, as if such occupation was for their own private advantage, and not for any public purpose, and shall be liable to be rated as such occupiers by their corporate style and title.

Page 783. *Charitable Institutions.*—By charitable subscriptions and bequests, funds were raised, which were laid out partly in the purchase of a house and lands, vested in certain persons in trust for maintaining a school. No child was admitted to the school, whose parents were able to defray the expense of his education. Each child paid 12*l.* annually towards his expenses, but the average annual expenses with respect to each child was 20*l.*, the difference being defrayed from the funds of the institution. No one resided in the house besides the children, and the officers and servants of the institution. The management was carried on by a committee, who held their meetings in the house. The land was appropriated to the

growth of vegetables consumed in the household. The committee, officers, and servants had no other accommodation on the premises, than what was essentially requisite for the discharge of their duties. The trustees and committee received no personal profit; but the superintendents had salaries. Held, that the trustees were rateable to the poor, in respect of the house and lands.—*Reg. v. Sterry*, 12 Ad. & E. 84.

The treasurer of the London Missionary Society was assessed to the poor rate, as the occupier of premises held on lease by the society, and consisting of a board room, secretary's room, museum, clerks' offices, and store rooms. The society was founded entirely for religious and charitable purposes, and supported by voluntary contributions. The premises were occupied by them merely for conducting the affairs of the institution; no person sleeping there. The store rooms were used for keeping articles intended for exportation, in furtherance of the society's objects. The treasurer attended at the premises once a week for a few hours to superintend the society's affairs, which were there carried on by the clerks, who were mere servants receiving salaries. The treasurer was not paid, and was a contributor to the funds of the society, and, for the purposes of the case, was identified with them. No person connected with the society derived any pecuniary profit or personal emolument from their occupation of the premises. Neither the treasurer, nor any person connected with the society and occupying the premises, resided in the parish or held property there, except as above mentioned. Held, that there was no beneficial occupation, and that the rate was bad.—*Reg. v. Wilson*, 12 Ad. & E. 94.

Page 786. *Turnpike tolls.*—By the General Turnpike Act, 3 Geo. 4, c. 126, s. 51, no tolls to be taken at any turnpike gate, nor toll house for the purpose of collecting the same, nor any person in respect of such tolls or toll house, shall be rated to the poor's rate, or any other public or parochial levy. And the tolls are exempt, notwithstanding the trustees are shareholders and owners of the soil of the road.—*R. v. Trustees of Great Dover Street Road*, 5 Ad. & E. 692.

Page 787. *Tithes.*—Under the 6 & 7 Will. 4, c. 96, s. 1, the vicar of a parish, receiving composition for small tithes, is to be rated on such receipt in the same way as the occupier of land; that is, on the sum for which the same would let, free from tenant's rates and taxes, and ecclesiastical dues.—*Reg. v. Capel*, 12 Ad. & E. 382.

Page 788. *Mines.*—By the custom of the stannaries, the right of working tin mines in certain manors is vested in the owner of tin bounds, he paying the lord or his lessee one tenth of the tin gained. A., the lord's lessee of the toll and farm of tin, granted to R., for a term, liberty to enter one of the mines, and dig and search for tin there, and to carry it away; yielding, paying, and delivering to A., from time to time, within six weeks after the return or sale of every parcel of tin gotten on the premises, one shilling in the pound on the gross value of all tin which should from time to time be so gotten. R., at the time of the grant, was an owner of tin bounds, within which the mine was situate, and worked the mine after the demise, paying A. one shilling in the pound in money, according to the reservation. Held, that the grant was a good, and not a colourable, demise, at least of the tin tolls, the sessions not finding fraud; that the one shilling reserved was a rent, and not a virtual share of the produce of the mine; and, therefore, that A. was not rateable in respect of it as an occupier; but that, for tin toll received in kind from other mines, he was so rateable.—*Reg. v. Crease*, 11 Ad. & E. 677.

The owner of certain lands, and of mines therein, demised for years all the land, mines, and veins of lead and other ore, saving to himself a right of entering to view the premises, the lessee yielding, paying, and rendering to him a full fifth part of all the lead or other ore from time to time gotten by the lessee, well cleansed, dressed, washed, and made merchantable and fit for smelting at the cost of the lessee, to be delivered clear of all deductions. For the purpose of preparing the ore for delivery according to the terms of the lease, it had to undergo a laborious and expensive process, by which foreign substances were removed, but the character of the ore was not otherwise altered. Held, that the lessor was rateable to the relief of the poor, in respect of the ore delivered to him under the above demise.—*Reg. v. Todd*, 12 Ad. & E. 816.

Page 791. *Stock in Trade.*—The Parochial Assessment Act, 6 & 7 Will. 4, c. 96, does not alter the law as to the rateability of personal property; therefore, a poor rate made after the statute, omitting stock in trade which yields a profit in the parish, is liable to be quashed on appeal.—*Reg. v. Lumsdaine*, 10 Ad. & E. 157.

But by 3 & 4 Vict. c. 89, (continued to 1st October, 1843, by 5 & 6 Vict. c. 50,) overseers are prohibited from taxing any inhabitant of a parish, as such inhabitant, in respect of his ability derived from

the profits of stock in trade, or any other property, for the relief of the poor.

Page 794. *Proportion of rating.—Machinery.*—Where, in certain houses and buildings of a parish, there were steam engines and other machinery affixed to them, and the houses were valued only at what they were worth to let, without reference to the value which they derived from the engines, &c.; it was held, that the rate was bad; for that the machinery constituted a mode of occupying, and that the houses ought to be rated according to the increased value arising from the machinery.—*R. v. Birmingham Gas Company*, 6 Ad. & E. 634.

Page 797. *Distraining for Rate.*—A *mandamus* will be granted, commanding justices to issue a distress warrant for levying a poor rate, where the case does not raise sufficient doubt of their power to issue such warrant, although no indemnity is offered to the justices. *Reg. v. Marriott*, 12 Ad. & E. 779.

V. OF THE SETTLEMENT OF THE POOR.

Definition of the term.—A *settlement* is the right of a poor person to be relieved by that parish, in which the right has been *last* acquired. The gaining a subsequent settlement destroys the former one; therefore, where a party acquires several different settlements, he has no option given him to choose the parish from which he may demand relief; but he must seek relief in that parish where he acquired his *last* legal settlement. But a settlement once gained, and no subsequent one acquired, is of such a permanent nature in the eye of the law, that it is not forfeitable by attainder, and may be communicated from parent to child, or husband to wife, although the criminal conduct of the party may have worked a forfeiture of other civil rights(a).

Who may gain a Settlement.—An alien may acquire a settlement in some of the modes by which natural-born subjects obtain the privilege, if he is not an alien enemy(b). And a convicted felon, discharged under the sign manual, it has also been held may acquire a

(a) *R. v. St. Mary, Cardigan*, 6 T. R. 116. (b) *R. v. Eastbourne*, 4 East, 103.

settlement by purchase (*c*); married women, however, cannot by *any act of their own* acquire a settlement.

The law as to settlements may be thus divided:—

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|--|---------------------------------------|
| 1. <i>Of Settlement by Birth.</i> | 7. <i>Of Settlement by Estate.</i> |
| 2. ————— <i>by Parentage.</i> | 8. ————— <i>by serving an Annual</i> |
| 3. ————— <i>by Marriage.</i> | Office. |
| 4. ————— <i>by Hiring and Service.</i> | 9. ————— <i>by Payment of Rates.</i> |
| 5. ————— <i>by Apprenticeship.</i> | 10. ————— <i>by Acknowledgment by</i> |
| 6. ————— <i>by Renting a Tenement.</i> | Certificate, Relief, &c. |

1. *Of Settlement by Birth.*

The place of birth is, *primâ facie*, the place of settlement (*d*); but no settlement is acquired by birth, if the settlement of the father or mother is known; for in that case the child, if legitimate, has the same settlement as the parent. It is difficult, however, to establish satisfactorily a birth settlement; for it cannot be proved by the mere production of a parish register, without some further evidence of identity; and the pauper himself can only recollect the fact of his first living at some particular place, which is but slight evidence of his having been born at that place (*e*).

Bastards.]—Before the 4 & 5 Will. 4, c. 76, the settlement of a bastard was invariably (with some few statutable exceptions as to prisons, hospitals, and other establishments of that nature) the place of birth. But now, by *sect.* 71 of that statute, every child born a bastard shall have and follow the settlement of its mother, until it attains the age of sixteen, or acquires a settlement in its own right (*f*); and the mother is until then liable to maintain it, while she remains unmarried, or a widow. If she should marry, then, under the 57th *sect.*, her husband is bound to maintain the child till the age of sixteen, or the death of the mother; and all liability of the putative father appears to be done away with by the mere circumstance of the mother's marriage (*g*).

Where, however, the mother has no settlement, the place of birth will be the only settlement of her illegitimate child. And where the child was born before the passing of the 4 & 5 Will. 4, c. 76, that is, before the 14th August, 1834, the place of birth will be still the place of its settlement, with these exceptions:—

(*c*) *R. v. Haddenham*, 15 East, 463.
 (*d*) *R. v. Heatun*, 6 T. R. 653; *Crip-
 plegate v. St. Saviour's*, 2 Bott, 27.
 (*e*) *R. v. Trounbridge*, 7 B. & C. 252.

(*f*) And see *ante*, title *Bastard*.
 (*g*) *Lang v. Spicer*, 1 Tyr. & Gr. 58;
 3 Cr. M. & R. 129.

1st. Where the woman came into the place *by collusion* of the officers of the parish to which she belonged, with intent to throw a burthen on the other parish (*h*); in which case the child is settled in the parish where the fraud was committed; but the fraud must be that of the parish officers, and not that of the father of the child, or a private individual (*i*).

2ndly. Where the child was born of a woman who was *at the time under an order of removal*, whether before actual removal, or *in transitu* (*h*), or during a suspension of the order on account of the sickness (*l*) of the mother; in which cases the child is not settled in the parish where born, but in that to which the mother is ordered to be removed. But where the order of removal is quashed upon appeal, and the child is born pending the appeal, then its settlement is in the removing parish; for where the mother has been improperly removed, the parish whence the removal was made, and where, but for this, the child would have been born, is to be considered the place of its birth (*m*). And where the order is once executed by the actual removal of the woman, and she returns into the removing parish, without the knowledge of the overseers of the parish to which the removal was made, then the child is settled in the place where it is born (*n*).

3dly. Where the child was born in an *extra-parochial place*, in which case it would have no settlement (*o*).

4thly. Where the child was born of a woman confined within the walls of a *prison*, or any *house licensed for the reception of pregnant women* (*p*), or in any *house of industry* or *poor-house*; in which last cases the child is to have the settlement of the mother (*q*).

5thly. Where the birth happened in any *county lunatic asylum*; when the child also follows the settlement of its mother (*r*).

6thly. Where the birth happened in a parish, where the mother was residing under a *certificate* from another parish, acknowledging that the child with which she was *then pregnant* was legally settled in such other parish (*s*); but not where the certificate engages for the lia-

(*h*) *Tewkesbury v. Twynning*, 2 Bulstr. 349; *Masters v. Child*, 3 Salk. 66.

(*i*) *R. v. Mattersey*, 4 B. & Adol. 211; 1 Nev. & M. 49.

(*k*) *R. v. Ickleford*, 1 Sess. Cas. 33; 2 Bott, 9; *Jane Gray's case*, 2 Bott, 8.

(*l*) 35 Geo. 3, c. 101, s. 6.

(*m*) *R. v. Great Salkeld*, 6 M. & S. 408; *Westbury and Coston*, 2 Salk. 532.

(*n*) *R. v. Halifax*, 2 B. & Ad. 211.

(*o*) *R. v. St. Nicholas, Leicester*, 2 B. & C. 889.

(*p*) 54 Geo. 3, c. 170, s. 2.

(*q*) *Id.* s. 3; 22 Geo. 3, c. 83, s. 39.

(*r*) 9 Geo. 4, c. 40, s. 49.

(*s*) *R. v. Ipsley*, Burr. S. C. 650; 2 Bott, 15.

bility of the other parish, *as to all other children* which she may have (*t*).

When removable from the Mother.].—Although the settlement of a bastard child may be thus frequently different from that of its mother, yet it cannot be removed from the mother during the time of *nurture*; which the law has defined to be, until it is seven years of age (*u*). But if the mother voluntarily deserts her child, then this reason does not apply, and the child may be removed to the place of the mother's settlement. The parish, where the child is legally settled, is bound to maintain it whilst residing in another parish with its mother for nurture (*x*).

Evidence as to place of Birth.].—The locality of the birth must be proved either by one of the parents, or by some person who saw the mother in the parish just before or immediately after that event, and who also saw the child, and can give evidence of identity; for the party himself can have no recollection of the place of his birth, and the fact of his remembering himself when he was four years of age in the parish of A., is no proof that he was born there (*y*). Hearsay declarations of the pauper's deceased father as to the place of birth are not admissible in evidence (*z*); neither is the register of baptism, *per se*, sufficient evidence of the place of birth, without some evidence of the age of the child at the time of baptism, to afford a presumption that it was born there (*a*); or accompanied with some evidence of identity (*b*).

Evidence as to time of Birth.].—The parents may prove the *time* of birth, and after their death, their declarations made in their lifetime are evidence of that fact; but the register is only evidence of the christening, and *non constat* thence when the child was born (*c*). And although the father be living, yet the declaration of the deceased mother is evidence as to the *time* of birth (*d*).

Evidence as to Legitimacy.].—After proof of the marriage of the parents, a child is presumed to be legitimate, until the contrary be proved. And Lord Mansfield seemed to think, in one case, that evi-

(*t*) *R. v. Mahon*, 7 T. R. 362.
 (*u*) *Cripplegate v. St. Saviour's*, 2 Bott, 27; *Skaffreth v. Walford*, 2 Bott, 11.
 (*x*) *R. v. Hemlington*, 1 Doug. 9, n. 2.
 (*y*) *R. v. Troubridge*, 7 B. & C. 252;
 1 Man. & Ry. 7.
 (*z*) *R. v. Erith*, 8 East, 539.

(*a*) *R. v. North Petherton*, 5 B. & C. 508; *Creech, St. Michael v. Pitminster*, Burr. S. C. 765; 2 Bott, 28.
 (*b*) *Goodright v. Moss*, Cowp. 591.
 (*c*) *Ibid.*
 (*d*) *R. v. Birmingham*, 4 Chit. Burn, 285.

dence of thirty years cohabitation as man and wife was sufficient proof of marriage to found an order of removal upon (*e*). And presumption will be in favour of legitimacy, though the parents were separated by voluntary deed; but the presumption is the other way, if they are separated by a divorce *a mensâ et thoro*; and the child is of course a bastard, if begotten and born after a divorce *a vinculo matrimonii*.

Evidence as to Illegitimacy.—The parents may be called to prove the illegitimacy of their child (*f*); and this, although in contradiction to a previous assertion that they were married (*g*). A married woman may also be called to prove the fact of connection with the person whom she charges as the real father of the child (*h*), but not the non-access of her husband (*i*). Nor can either husband, or wife, be examined as to any collateral fact, for the purpose of proving non-access (*k*). Where the husband and wife are living separately, the fact that they had opportunities of access is not conclusive of the legitimacy; but the presumption of intercourse may be rebutted by circumstances. So, if there be an opportunity of access, but the wife is notoriously living in adultery, it does not necessarily follow, that a child, begotten while such opportunity existed, was not the husband's. Thus, where a wife was deserted by her husband, who went to live with another woman, and the wife at the end of three or four years married another man, by whom she had two children, and eleven years after the second marriage she again cohabited with her first husband; but it did not appear where that husband was between the time of his desertion and again cohabiting with his wife; it was held, that this was not sufficient evidence of the non-access of the husband at the time when the children were begotten; and therefore that the wife's evidence could not be received to prove their illegitimacy (*l*).

2. Of Settlement by Parentage.

1. When derived from the Father.
2. When from the Mother.
3. Of Emancipation.

1. When derived from the Father.

The settlement of every child born in wedlock is to be referred in

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| (<i>e</i>) <i>R. v. Stockland</i> , Burr. S. C. 508; | (<i>h</i>) <i>R. v. Luffe</i> , 8 East, 193. |
| 2 Bott, 91. | (<i>i</i>) <i>R. v. Kea</i> , 11 East, 132. |
| (<i>f</i>) <i>R. v. Bromley</i> , 6 T. R. 330. | (<i>k</i>) <i>R. v. Sourton</i> , 5 Ad. & E. 180. |
| (<i>g</i>) <i>St. Peter's v. Old Srinford</i> , Burr. | (<i>l</i>) <i>Reg. v. Mansfield</i> , 1 Adol. & E. N. |
| S. C. 25. | S. 444. |

the first instance to its father's settlement, if it can be traced, and if not, then to its mother's maiden settlement; and the death of the father before the child is born will not defeat its right to the father's settlement(*m*). The child also takes each successive settlement which the father may acquire after its birth, while it remains part of his family, or (as it is called) *unemancipated*(*n*). And the settlement of the father, derived from their grandmother, will be communicated to the children in preference to that of their own mother(*o*). And though the father be convicted of felony, yet a settlement acquired by him previous to his attainder, is communicated to the children born afterwards(*p*).

By 4 & 5 Will. 4, c. 57, s. 57, every man who shall marry a woman having a child or children, whether legitimate or illegitimate, shall be liable to maintain them as a part of his family, and shall be chargeable with all relief granted to or on account of such children, until they respectively attain the age of sixteen, or until the death of the mother, and the children shall, for the purposes of that act, be deemed a part of the husband's family. Under this enactment it has been held, that on the marriage of a widow, having children under the age of sixteen, the children do not acquire the settlement of the second husband, and therefore cannot be removed with him to the place of his settlement(*q*).

2. *When derived from the Mother.*

Where the father's settlement cannot be traced, the child then takes the settlement of the mother(*r*). And a *primâ facie* case of birth settlement may be answered by proof of the maiden settlement of its mother, without showing that its father had no settlement; for the fact of the appellant's relying on a birth settlement in effect supposes the father to have had none(*s*). And the children follow the settlement of the mother, which she acquires after the death of the father, and during her widowhood(*t*). But if the mother gain a subsequent settlement by a second marriage, the children by the first marriage will not in that case follow such settlement(*u*).

(*m*) *R. v. Clifton*, 2 Bott, 38; *R. v. Stone*, 6 T. R. 56.

(*n*) *Cumner v. Milton*, 2 Salk. 528; *St. Giles's, Reading, v. Eversly, Blackwater*, 1 Str. 580; 2 Ld. Ray. 1332.

(*o*) *R. v. St. Matthew's, Bethnal Green*, Burr. S. C. 482; 2 Bott, 54.

(*p*) *R. v. St. Mary, Cardigan*, 6 T. R. 116.

(*q*) *R. v. Walthamstow*, 6 Ad. & E. 301.

(*r*) *R. v. Westerham*, 2 Bott, 108; *St. Giles v. St. Margaret's*, 2 Bott, 107.

(*s*) *R. v. St. Mary, Leicester*, 3 Ad. & E. 644.

(*t*) *St. George's v. St. Katharine's, Ld.* Ray. 1474; 2 Bott, 47.

(*u*) *Wangford v. Brandon*, Carth. 449.

3. *Of Emancipation.*

A child is *emancipated* as soon as he marries, or contracts some other relation, so as wholly and permanently to exclude the parental control; or, after attaining the age of twenty-one, removes from his father's family. And where the parent gains a fresh settlement, after the child has been thus emancipated, it will not be communicated to the child, who must in that case revert to the last settlement of the parent previous to the emancipation. But where the child once gains a settlement of his own, he is not then entitled to any settlement of the parent. An idiot, however, who is not competent to take the management of his own affairs, is always to be considered as a minor, and never emancipated (*x*). And, upon the same principle, a child who was rendered incapable of work, by her hands being burnt off, was held to follow her father's settlement, although she continued in the workhouse after twenty-one (*y*).

An occasional, or even a protracted, absence from the parental roof will not amount to an emancipation, while the child continues under the age of twenty-one; as where a son hires himself to serve on board a merchant's ship (*z*); or where a child goes to live with a relation, for support (*a*); even though a separate provision is made for the child, independently of the parents, who exercise no superintendence or immediate control over the child (*b*). So, where a son, nineteen years of age, went about the country working for himself, but treated his father's house as his home, and came there when he pleased, he was held not to be emancipated (*c*). And even though the son contracts an engagement inconsistent with the continuance of any parental control, yet if he returns to his father's house before he attains twenty-one, and continues there to live with him as part of his family, he is still unemancipated (*d*); as where the son enlists as a soldier, and comes back to live with his father upon his discharge (*e*).

But where a son contracts an engagement, which wholly and permanently excludes the parental control, and which continues to subsist after he attains twenty-one, his emancipation becomes then

(*x*) *R. v. Much Cowarne*, 2 B. & Ad. 861.

(*y*) *R. v. Broadhembury*, 4 Doug. 241.

(*z*) *R. v. Lytchet Maltravers*, 7 B. & C. 226.

(*a*) *R. v. Tottington Lower End*, Cald. 284; 2 Bott, 64.

(*b*) *R. v. Uckfield*, 5 M. & S. 214.

(*c*) *R. v. Hatifar*, Burr. S. C. 806; 2 Bott, 63; *R. v. Wilmington*, 5 B. & Ald. 525.

(*d*) *R. v. Collingbourn Davis*, 4 T. R. 199.

(*e*) *R. v. Rotherfield Greys*, 1 B. & C. 345.

complete, and will relate back to the time of his contracting such engagement; as where he enlists in the army, and continues to serve after attaining twenty-one (*f*); or, after being balloted for the militia, and being called out into actual service, continues in such service after he is twenty-one (*g*).

In order to constitute emancipation, however, it is not enough that a child attains the age of twenty-one years, if after that period he still continues a member of his father's family; notwithstanding he is engaged in business on his own account, or is pursuing some separate and independent employment; as where a son, after his father's death, upon attaining the age of manhood followed his father's business, but continued to live with his mother (*h*); or where he served in the militia for a portion of the year, but lived in his father's family when not absent upon duty (*i*). So, even though a son's apprenticeship does not expire until after he has attained the age of twenty-one, yet if by some accidental circumstance he has gained no settlement by the apprenticeship, and he returns to live with his father, he is not emancipated (*j*); nor, as has been held in one case, although he never returned to his father's family after the expiration of the apprenticeship, but worked at his own trade at different places about the county (*k*). But it would seem, that this last case cannot be supported to its full extent; for the voluntary withdrawal or absence of a son from his father's family after the age of twenty-one, of itself, constitutes an emancipation (*l*); and this, notwithstanding the child was, at the time of such withdrawal, living with its father under a certificate (*m*); or where the absence is only for the space of three weeks, and the child intended to return to the father's family; as where a daughter hired herself for that period to work at weekly wages for the harvest, but with no intention whatever of abandoning her home (*n*).

But whenever a child gains a settlement in its own right, it cannot then derive any settlement from parentage, notwithstanding it may be living with the father at the very time of the father acquiring a sub-

(*f*) *R. v. Rotherfield Greys*, *supra*.

(*g*) *R. v. Hardwick*, 5 B. & Ald. 176.

(*h*) *R. v. Sowerby*, 2 East, 276.

(*i*) *R. v. Woburn*, 8 T. R. 479.

(*j*) *R. v. Huggate*, 2 B. & Ald. 582.

(*k*) *R. v. Edgeworth*, 3 T. R. 353.

(*l*) *R. v. Huggate*, *supra*; *R. v. Lawford*, 8 B. & C. 271; *R. v. Cowhoneyborne*, 10 East, 88.

(*m*) *R. v. Morley*, 2 M. & S. 417.

(*n*) *R. v. Oulton*, 5 B. & Ad. 958. In this case Mr. J. Littledale differed with the rest of the Court, and the decision appears to be somewhat inconsistent with *R. v. Woburn*, 8 T. R. 479, *supra*, where it was held that the service of a son in the militia until twenty-three years of age was not an emancipation, where he continued to live with his father, when not absent on duty.

sequent settlement (*o*). And the marriage of a child is not the less an emancipation, because it continues to live with its father's family (*p*). Where the emancipation arises from the acquisition of a settlement by hiring and service, the emancipation commences from the termination of the year's service (*q*).

3. *Settlement by Marriage.*

When a woman marries, she takes the settlement of her husband, if he has one, as well as any subsequent settlement which he may acquire; and this, whether she resides with her husband in the place where he is settled, or not (*r*). But, if the husband has no settlement, her prior settlement continues, whether derivative, or acquired in her own right; and, although the wife cannot be removed to the place of her settlement, if such removal would have the effect of separating her from her husband, and the husband cannot be removed to his wife's settlement, yet, when the husband dies, or runs away from his wife, she and her children may be then removed to the place of her maiden settlement (*s*).

If a woman marries a *Scotchman*, or an *Irishman*, she may, under the provisions of the 59 Geo. 3, c. 12, s. 33, be removed *with* him to Scotland or Ireland, if any part of the family are chargeable; but if the husband die or deserts his family, the wife and children may be still removed to her maiden settlement (*t*).

The wife, during her coverture, is incapacitated from gaining a distinct settlement of her own, notwithstanding she is deserted by her husband (*u*); nor can she, after his death, complete the imperfect settlement of her husband,—as where the husband was in the progress of gaining a settlement, by renting a tenement for a year, and died a few days before it was completed, it was held that his widow could not, by continuing to reside and paying the year's rent, perfect the settlement for herself and children, as she was not the person who hired the tenement (*x*). Although the marriage be fraudulently obtained by a conspiracy of overseers, yet if the marriage is valid in law, the wife will still take the husband's settlement (*y*).

(*o*) *R. v. Bleasby*, 3 B. & Ald. 377.

(*p*) *R. v. Everton*, 1 East. 526.

(*q*) *R. v. New Forest*, 5 T. R. 478.

(*r*) *St. Giles v. Eversley*, 2 Bott, 103.

(*s*) *R. v. Chiddingstone*, 1 Str. 683;
St. John's, Wapping, and St. Bodolph's,

Bishopsgate, Burr. S. C. 367; 2 Bott, 109.

(*t*) *R. v. Cottingham*, 7 B. & C. 615.

(*u*) *R. v. Aythorp Roothing*, 2 Bott,
 104.

(*x*) *R. v. Crayford*, 6 B. & C. 68.

(*y*) *R. v. Birmingham*, 8 B. & C. 29.

Evidence.—In a settlement case, either the husband, or the wife, is a competent witness to prove the marriage; which may also be proved by any other person who was present at the ceremony, or by the copy of the parish register, with proof of the identity of the parties; or the marriage may be proved by reputation, as that the parties cohabited together, and were received by relations and friends as man and wife (z). A marriage is also presumed to have been celebrated with the due formalities, until the contrary be shown (a).

Statutes.—By 4 Geo. 4, c. 76, s. 22, if any person shall knowingly and wilfully intermarry in any other place than a church, or a public chapel wherein banns may be lawfully published, unless by special licence, or without due publication of banns, or licence from a person having authority to grant the same, or shall knowingly and wilfully consent to, or acquiesce in the solemnization of such marriage by any person not being in holy orders, the marriage is declared to be null and void. And, with respect to marriages by *banns*,—if either of the parties be under the age of twenty-one years, and the parents or guardians of such party shall publicly declare in the church or chapel, where, and at the time, the banns are published, their dissent to such marriage, the publication of banns is declared to be absolutely void. By *sect. 2* of the same statute the bishop of the diocese, with the consent of the patron and incumbent, may authorize the publication of banns and solemnization of marriages, in any public chapel, having a chapelry thereunto annexed, in regard to persons residing within such chapelry; provided (by *sect. 5*) a notice to that effect is placed in some conspicuous part of the interior of the chapel.

The law, however, as to the solemnization of the marriage, has been a good deal relaxed by the 6 & 7 Will. 4, c. 85; which by *sect. 1* declares, that where any marriage might be solemnized after publication of banns, it may be solemnized in like manner on production of the registrar's certificate provided by that act.

By *sect. 2*, Quakers and Jews may continue to contract and solemnize marriage according to their usages, provided both parties are of the same religion, and they obtain the registrar's certificate.

By *sect. 4*, in every case of marriage, unless by licence, special licence, or by banns, one of the parties must give notice to the superintendent registrar of the district, within which the parties shall have dwelt for not less than seven days then next preceding, stating

(z) *Morris v. Miller*, 4 Burr. 2057.

(a) *St. Devereux v. Much Dewchurch*, 1 Bl. 367.

therein the name and surname, and the profession or condition of each of the parties, the dwelling-place of each of them, and the church or other building in which the marriage is to be solemnized; which notice (by *sect. 6*) must be read three several times in three successive weeks, at the weekly meetings of the guardians of any poor law union or any parish or place comprising the district for which such superintendent registrar shall act.

By *sect. 7*, after seven days, if the marriage is to be solemnized by licence, or after twenty-one days, if without licence, after the entry of the notice, the superintendent registrar must, on demand, give a certificate of the notice; but, by *sects. 9* and *10*, the issue of this certificate may be forbidden by any person whose consent to a marriage by licence is required by law.

By *sect. 18*, any separate building, certified according to law as a place of religious worship, may be registered for solemnizing marriages in the manner prescribed by the act; and by *sect. 20*, marriages may be solemnized in such registered places, in the presence of some registrar and of two witnesses, between the hours of eight and twelve, a. m.

By *sect. 21*, marriages may also be solemnized at the office, and in the presence, of the superintendent registrar and some registrar of the district, and in the presence of two witnesses, with open doors, and between the above hours.

By *sect. 23*, the registrar is to register all marriages solemnized in his presence in a proper book for that purpose; and the entry of every marriage must be signed by the person before whom it is solemnized, and by the registrar, and also by the parties married, and attested by two witnesses.

By *sect. 25*, after the marriage is solemnized, it is not required in any suit touching the validity of the marriage, to give any proof of the previous residence of either of the parties, or of the consent of any person to the marriage.

By *sect. 26*, the bishop of the diocese may, with the consent of the patron, license chapels for the solemnization of marriages in populous places.

By *sect. 38*, persons making false declarations are liable to the penalties of perjury; by *sect. 39*, persons unduly solemnizing marriages are guilty of Felony; and by *sect. 40*, superintendent registrars unduly issuing certificates are also guilty of Felony (*b*).

(b) And see *ante*, *Marriage*.

By *sect. 42*, marriages are declared void, if unduly solemnized with the knowledge of both parties. But nothing in the act contained shall extend to annul any marriage legally solemnized according to the provisions of the 4 Geo. 4, c. 76.

The marriage of a minor *by licence*, without consent of parents or guardians, is valid (*c*), notwithstanding the party procuring such marriage forfeits all the property accruing from it.

A marriage is good, if the banns have been published in the name by which one of the parties was commonly known, although it is not his baptismal name (*d*). And the same with respect to a marriage by licence, although the husband had assumed the name to conceal his real one, for fear of being apprehended as a deserter, and had only acquired the name by reputation for the space of sixteen weeks in the parish where he was married; though, if the name had been assumed to conceal himself from the party to whom he was about to be married, that would have been a fraud upon the rights of marriage, and in that case the marriage would have been illegal (*e*). So the marriage of a widow by her maiden name was held good, where she for a considerable period had used and been known by that name, and it had not been assumed for any fraudulent purpose (*f*). But, where the banns are published in a name by which a woman was never known and never used, the marriage is void, although the name had been, by some mistake of the minister, entered in the baptismal register as the woman's real name (*g*).

A marriage contracted in a foreign country, if duly solemnized according to the law of that country, is recognized as a valid marriage by the law of England, as well as a marriage between British subjects solemnized there according to the English law (*h*). And by 4 Geo. 4, c. 91, all marriages solemnized by a minister of the Church of England in the chapel or house of the British ambassador or minister residing in a foreign country, or in the chapel belonging to any British factory abroad, or in the house of any British subject residing at such factory, or marriages solemnized within the British lines by any chaplain, or officer officiating under the orders of the commanding officer of a British army serving abroad, are declared to be valid.

(*c*) *R. v. Birmingham*, 8 B. & C. 29.
 (*d*) *R. v. Billingham*, 3 M. & S. 250.
 (*e*) *R. v. Burton-upon-Trent*, 3 M. & S. 527.
 (*f*) *R. St. Faith's, Newton*, 3 D. &

Ry. 348
 (*g*) *R. v. Tibshelf*, 1 B. & Adol. 190.
 (*h*) *Dalrymple v. Dalrymple*, 2 Hagg. 54; *Ruding v. Smith*, *id.* 371; *R. v. Bampton*, 10 East, 282.

A marriage is void *ab initio*, if there was at the time a prior marriage subsisting between either of the parties with a third person; but, to render the second marriage void, the existence of the first husband or wife must be strictly proved (*i*).

4. *Settlement by Hiring and Service.*

A settlement by *hiring and service* was one more frequently acquired than any other description of settlement, and was consequently the subject of greatest litigation between contending parishes. But now, by the 4 & 5 Will. 4, c. 76, s. 64, it is declared, that after the passing of that act, namely, the 14th August, 1834, no settlement shall be acquired by *hiring and service*, or by *residence* under the same, or by *serving an office*; and by *sect. 65*, no person, under any contract of hiring and service not then completed, shall acquire, or be deemed or adjudged to have acquired, any settlement by reason of such hiring and service, or any residence under the same. Under this last section it has been held, that, when a pauper served for a year continuously under two successive contracts, the first a hiring for less than a year, and the second a yearly hiring; and after she had so served for a year, but before the term of the yearly hiring had expired, the above statute was passed, no settlement was gained by her; as the contract was not completed at the time of the passing of the act (*h*).—As questions must for many years to come arise in respect of this species of settlement, whether gained by individuals in their own right, or communicated to them by parentage or marriage, it will be proper to consider the whole law on the subject as it existed before the passing of the 4 & 5 Will. 4, c. 76.

The foundation of this branch of settlement is the 3 W. & M. c. 11, by the 7th *sect.* of which act it is declared, that if any unmarried person, not having child or children, shall be lawfully hired into any parish or town for one year, such service shall be adjudged and deemed a good settlement therein; provided, by 8 & 9 Will. 3, c. 30, s. 4, such person shall *continue* and abide in the *same service* during the space of one whole year. By the previous statute of 13 & 14 Car. 2, c. 12, s. 1, power was given to two justices, upon complaint made by the churchwardens or overseers of any parish within forty days after any poor person came to settle in any tenement under the yearly value of 10*l.*, who was likely to be chargeable to the parish, to remove such person to the parish where he was last legally set-

(*i*) *R. v. Twynning*, 2 B. & Ald. 386.

(*h*) *R. v. Rettendon*, 6 Ad. & El. 296.

tled, either as a native, householder, sojourner, apprentice, or *servant for the space of forty days* at the least, unless he gave sufficient security for the discharge of the parish to be allowed by the justices, or unless (by *sect. 3*) he came into the parish to work, having a certificate (*l*) from the minister and one of the churchwardens and one of the overseers of another parish that he was an inhabitant of such other parish. But, by 12 Ann. c. 18, s. 2, no person, being a hired servant to a party residing in a parish under such a certificate, could gain a settlement by reason of such hiring and service. And by the General Turnpike Act, 3 Geo. 4, c. 126, s. 31, no apprentice or *servant* of a collector or renter of tolls can thereby gain a settlement. There are also other statutory provisions to prevent this species of settlement being gained, under some particular circumstances which will be noticed in the course of this inquiry.

It is proposed to consider the subject in the following order:—

- I. *Of the Contract of Hiring.*
- II. *Of the Service under the Contract.*
- III. *The place in which the Settlement is acquired.*

I. *Of the Contract of Hiring.*

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| 1. <i>Of the Parties to the Contract.</i> | (<i>Hirings at Weekly Wages.</i>) |
| 2. <i>Of the Lawfulness of the Contract.</i> | (<i>Hiring by the Job.</i>) |
| 3. <i>When a Hiring for a Year will or will not be implied.</i> | (<i>Retrospective Hirings.</i>) |
| (<i>General Hirings.</i>) | (<i>Hiring made to avoid a Settlement.</i>) |
| (<i>Hiring for a less period than a Year.</i>) | (<i>Conditional Hirings.</i>) |
| (<i>When implied from the Service.</i>) | (<i>Exceptive Hirings.</i>) |
| | (<i>Imperfect Apprenticeship.</i>) |

1. *Of the Parties to the Contract.*

The servant, at the time of entering into the contract, must, by the statute of 3 W. & M. c. 11, s. 7, be “unmarried, not having child or children.” A *widower* is an unmarried person, within the meaning of the statute (*m*); and if a married man agree to a hiring, subject to approbation, and his wife die before the agreement is complete, and it is afterwards completed, the hiring is sufficient (*n*). The marriage of the servant, also, during the service does not defeat the contract or the settlement (*o*); not even if he married after the hiring and before he entered upon the service, unless in the case of fraud, and with intent

(*l*) See *post*, X. “Settlement by Certificate.”

(*m*) *Anthony v. Cardigan*, 2 Bott, 257.

(*n*) *R. v. Banknewton*, 2 Burr. S. C. 259.

(*o*) *Farrington v. Witty*, 2 Salk. 527.

to evade the statute (*p*). If a servant at the time of the contract had a child *emancipated*, he is then considered as not having a child, within the meaning of the statute; for the intent of the legislature was merely to prevent the child from being chargeable to the parish into which the father was hired (*q*). But where the emancipation of the child was imperfect, and it had not completely gained a settlement, the father in that case could acquire no settlement under a contract for hiring and service (*r*).

To enable the servant to gain a settlement, he must have been *sui juris* at the time of entering into the contract; for a party, who has contracted a relation which disables him from contracting any other, without the consent of his first master, cannot lawfully bind himself to serve another master. Therefore, an *apprentice* cannot, during the continuance of his apprenticeship, enter into a contract of hiring and service (*s*); nor a soldier in the regular army (*t*), notwithstanding he hired himself with the permission of his commanding officer (*u*); nor a militia-man (*x*), or a member of a volunteer corps (*y*) who did not inform his master, when he hired himself, of his liability to be called out to serve in the militia or the volunteers. But where a militia-man informed his master of that fact at the time of the hiring, he would then gain a settlement, although he was afterwards called out on service for fourteen days (*z*).

The contract is good, although either of the parties was an *infant* at the time of entering into it; for the contract of an infant, made for his own benefit, is not void, but only voidable by himself. And it makes no difference, that the contract was made by the infant with his own father, if it was a *bonâ fide* contract of hiring and service (*a*); or that the father, at the time of the contract, had gained no settlement himself; because a servant does not derive his settlement from his master, but from the service (*b*). But, in order to ascertain the *bona fides* of such a contract, it will be very material to inquire, whether the father had really any occupation for a hired servant, and whether he had any thing for him to do in that capacity; for, if the father had no employment for a hired servant, and the service was merely a pre-

(*p*) *R. v. Allendale*, 3 T. R. 382.

(*q*) *Anthony v. Cardigan*, 2 Bott, 257.

(*r*) *R. v. New Forest*, 5 T. R. 478.

(*s*) *R. v. Duwclish*, 1 B. & Ald. 281.

(*t*) *R. v. Norton*, 9 East, 206.

(*u*) *R. v. Beaulieu*, 3 M. & S. 329.

(*x*) *R. v. Holworthy*, 6 B. & C. 283;
R. v. Taunton, St. James's, 9 B. & C. 831.

(*y*) *R. v. Witnesham*, 4 Nev. & M. 447.

(*z*) *R. v. Emley Castle*, 3 B. & Adol. 826; *R. v. St. Mary, Colchester*, 5 B. & Adol. 1023.

(*a*) *R. v. Chertsey*, 2 T. R. 37; *R. v. Chillesford*, 4 B. & C. 94.

(*b*) *Missenden v. Chesham*, 2 Bott, 173.

tence, then the contract of hiring will under these circumstances confer no settlement (*c*).

The contract must be by the party himself, and not a compulsory hiring made by parish officers, although he submitted to serve under it (*d*). But, where the original agreement was made by the servant himself, it is not because the overseers undertook to provide him with clothes for the service, and the master agreed to pay the overseers a compensation for the clothes, that the contract is not to be considered as made by the servant *suo jure* (*e*).

The hiring may be by a public body, and by persons not rated to the poor, if the party hired was engaged to perform all the menial offices of a servant (*f*). But where by the regulations of a Bridewell, the turnkeys were to be appointed by the keeper, subject to the approbation and confirmation of the visiting justices; and the keeper might suspend, but not permanently displace them, without the authority of the justices; and they were to receive their salaries from the county treasurer, but in all other respects to be under the immediate orders and control of the keeper; it was held, that an appointment to the place of turnkey at a yearly salary under the above regulations, did not constitute a hiring, by which a settlement could be gained by the subsequent service of the turnkey; for that he was not the servant, either of the keeper, or the magistrates, not being hired by the former, nor being under the orders of the latter (*g*).

If the contract be by deed, it is not necessary that it should have been executed by the master, as well as by the servant, if the master accepted the service; for if a party takes the benefit of a deed, he is bound by it, although he has not executed it (*h*).

2. *Of the Lawfulness of the Contract.*

The contract must be *lawful* and binding on the master to employ, and on the servant to serve; for if either was not bound, the contract will not compel a settlement. The contract is not unlawful, though made on a Sunday; for the stat. of 29 Car. 2, c. 7, which prohibits the exercise of "labour, business, or work of the ordinary calling" of an individual on a Sunday, is confined to the things which are repeated daily or weekly in the course of a man's trade or business,

(*c*) *R. v. Winslow*, 4 B. & C. 94. (*f*) *R. v. Sandhurst*, 7 B. & C. 557.
 (*d*) *R. v. Rickinghall, Inferior*, 7 East, (*g*) *R. v. Sparsholt*, 4 Ad. & E. 491.
 373; *R. v. Stowmarket*, 9 East, 211. (*h*) *R. v. Houghton-le-Spring*, 2 B. &
 (*e*) *R. v. Dunton*, 15 East, 352. Ald. 375.

and do not extend to an hiring of a servant once a year (*i*). But a contract for service and cohabitation would be bad; for such a contract is illegal, being made *pro turpi causâ* (*k*).

3. When a Hiring for a Year will or will not be implied.

General Hirings.—Although no mention was made of time or wages when the party was hired, yet if the service was for a year, a yearly hiring is presumed; for a general indefinite hiring amounts, in law, to a hiring for a year, unless something appears that may raise a presumption to the contrary (*l*). But a hiring for “as long as the servant had a mind to stop,” does not amount to a yearly hiring, although the servant remained two years in the service; such a hiring being only considered as a hiring at will (*m*). And yet the reservation of a power, on the part of the master, to dismiss the servant, without notice, has been held not to prevent the hiring from being considered a yearly hiring (*n*).

Where the Hiring is in effect for a less period than a Year.—A hiring from one movable feast to another, as from Whitsuntide to Whitsuntide, has been held to gain a settlement, though there be not 365 days in that period (*o*); and, though the party left his service before the following Whitsuntide, yet if he had served 365 days, he of course acquires a settlement (*p*). So a hiring “on the day after Michaelmas-day till the Michaelmas-day following,” where the party was paid his wages on the Michaelmas-day, has been held to give a settlement (*q*). In this case, however, the continuance of the servant in his place on the following Michaelmas-day shows how the parties understood the contract; for the service was for a complete year, reckoning the first and last days of the service both inclusive. And this mode of reckoning was adopted in a subsequent case, where the hiring was from October 11th to October 10th (*r*), the word “till” or “to” being for this purpose considered to mean inclusive (*s*).

But a hiring *two days after Michaelmas* till the following Michaelmas gains no settlement (*t*); nor, in any case, where the hiring upon

(i) *R. v. Whitnash*, 7 B. & C. 596.

(k) *R. v. Northwinkfield*, 1 B. & Adol. 912.

(l) *R. v. Stockbridge*, Burr. S. C. 759; 2 Bott, 294; *R. v. Seaton*, 2 Bott, 297; Cald. 440; *R. v. Worfield*, 5 T. R. 506.

(m) *R. v. Christ's Parish*, 3 B. & C. 459; *R. v. Gt. Boden*, 7 B. & C. 249.

(n) *R. v. Sandhurst*, 7 B. & C. 557.

(o) *R. v. Newstead*, Burr. S. C. 669;

2 Bott, 343.

(p) *R. v. Ulverstone*, 7 T. R. 564.

(q) *R. v. Nuvestock*, Burr. S. C. 719; 2 Bott, 345.

(r) *R. v. Syderstone*, Cald. 19; 2 Bott, 346.

(s) *R. v. Skiplam*, 1 T. R. 490.

(t) *Coombs v. Westwoodhay*, 1 Str. 147; *R. v. Ardington*, 1 Ad. & E. 260; *R. v. Ackley*, 3 T. R. 250.

the face of it appears to be for less than a year, as a hiring for 52 weeks (*u*), notwithstanding such a hiring may be according to the custom of the country (*v*). So, two successive hirings for two successive half-years, as "from Whitsuntide to Martinmas," and again, "from Martinmas to Whitsuntide," will not gain a settlement; although such hirings are according to local custom (*x*). But where the pauper some weeks before Whitsuntide hired himself for half a year from Whitsuntide, and some days after the first hiring, but before Whitsuntide, he hired himself for the next winter half year, it was held that this was in effect a hiring for a year; inasmuch as, after the making of the second contract, the pauper was bound for a whole year not then commenced (*y*). In *leap-year*, if the hiring was for less than 366 days, it will not confer a settlement (*z*). And wherever the parties to the contract contemplated some portion of the year, when the master would not have employment for the servant, and the servant at those times was at liberty to work for other persons, the servant gains no settlement; for in such case the master has not control over the servant for the entire year, but only for so much of it as he can find employment for him (*a*).

Where implied from the Service.—A contract of hiring has been implied, where a party lived with another as ostler for two years, and was seen in menial service there (*b*). So, where he was seen and known to be in the service of another for upwards of a year, as a servant in husbandry (*c*); and, *à fortiori*, may such a hiring be presumed from a service of four years (*d*). So, where a party went into a service upon liking, and at the end of the year was paid by the year, a yearly hiring was presumed (*e*). And where a party was only hired for a certain period, but after the termination of that period continued to serve for three years further, this was also held to imply a yearly hiring for the last three years of the service (*f*).

Where not.—But where the relation of father and child subsisted between the parties, the presumption of a yearly hiring will in that case not arise, although there may have been previously a contract of

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| <p>(<i>u</i>) <i>R. v. Astley</i>, 4 Chit. Burn, 362.
 (<i>v</i>) <i>R. v. Hanwood</i>, Doug. 439.
 (<i>x</i>) <i>R. v. Lowther</i>, Burr. S. C. 674;
 2 Bott, 238; <i>Dunsford v. Ridgwick</i>, 2
 Salk. 535; 2 Bott, 250.
 (<i>y</i>) <i>Reg. v. Ravenstonedale</i>, 12 Ad. &
 E. 73.
 (<i>z</i>) <i>R. v. Worminghall</i>, 6 M. & S. 350.
 (<i>a</i>) <i>R. v. Lydd</i>, 2 B. & C. 754; <i>R.</i></p> | <p><i>v. South Killingholme</i>, 10 B. & C. 802.
 (<i>b</i>) <i>R. v. Holy Trinity</i>, in Wareham,
 Cald. 141; 2 Bott, 481.
 (<i>c</i>) <i>R. v. Lyth</i>, 5 T. R. 327.
 (<i>d</i>) <i>R. v. Pendleton</i>, 15 East, 449.
 (<i>e</i>) <i>R. v. Hales</i>, 5 T. R. 168.
 (<i>f</i>) <i>R. v. Long Whaddon</i>, 5 T. R. 447;
 <i>R. v. St. Martin's, Leicester</i>, 8 B. & C.
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hiring and service for a limited period (*i*). And if there be a known custom in the parish to hire servants for less than a year, a hiring for a year will not in such case be presumed (*h*). So a service for six months with an innkeeper, after a contract of hiring made with the waiter of the inn to be his assistant, but where there was no contract with the innkeeper himself, was held not to imply any contract for a yearly hiring with the innkeeper (*l*).

Hirings at Weekly Wages.—A hiring at weekly wages imports a hiring by the week, unless the inference which arises from the reservation of weekly wages be repelled by other circumstances (*m*); and this inference is not repelled by the servant first of all asking yearly wages (*n*). Therefore, a contract for wages “at 6s. a week, summer and winter,” is a weekly, and not a yearly hiring (*o*); for such a stipulation only imports that the wages should continue always the same, and not be varied according to the seasons. So a hiring at the weekly wages of 4s. “except in the harvest month, when the wages were to be increased to 10s. 6d. per week,” was held to be only a weekly hiring; for the stipulation as to the increased wages only showed that the parties contemplated the possibility of the service continuing during the harvest month (*p*); and the like was held where the increased wages were to be paid “for the harvest (*q*).” So a hiring by the month, at a month’s wages or a month’s warning, cannot be presumed to be a yearly hiring (*r*).

But, if there be any thing in the terms of the contract to show that the hiring was intended for a year, then the reservation of weekly wages will not control that hiring; as where the hiring was for 3s. a week “the year round, each to be at liberty on a fortnight’s notice (*s*);” or where there was a stipulation for “liberty to part on a month’s notice (*t*).”

Hiring by the Job.—Where a party was merely hired to do a particular job, it is not a hiring for a year, although he may have been employed on the job for a longer period than a year; and the same, where he is engaged to work by the piece, or to be paid according to

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| (<i>i</i>) <i>R. v. Sow</i> , 1 B. & Ald. 178. | 2 Bott, 292. |
| (<i>h</i>) <i>R. v. Bottesford</i> , 4 B. & C. 84. | (<i>p</i>) <i>R. v. Doddeshall</i> , 3 M. & S. 243. |
| (<i>l</i>) <i>R. v. St. Matthew's, Ipswich</i> , 3 T. R. 449. | (<i>q</i>) <i>R. v. Lambeth</i> , 4 M. & S. 315. |
| (<i>m</i>) <i>R. v. Newton Toney</i> , 2 T. R. 453; | (<i>r</i>) <i>R. v. Clave</i> , Burr. S. C. 819; 2 Bott, 295. |
| <i>R. v. Mitcham</i> , 12 East, 351; <i>R. v. Pucklechurch</i> , 5 East, 382. | (<i>s</i>) <i>R. v. Birdbroke</i> , 4 T. R. 245. |
| (<i>n</i>) <i>R. v. Warminster</i> , 6 B. & C. 77. | (<i>t</i>) <i>R. v. Hampreston</i> , 5 T. R. 205; |
| (<i>o</i>) <i>R. v. Dedham</i> , Burr. S. C. 653; | <i>R. v. Great Yarmouth</i> , 5 M. & S. 114; |
| | <i>R. v. St. Andrew's</i> , 8 B. & C. 679. |

the quantity of work done. Therefore, an agreement of the pauper with his master to live with him in his house, and to be paid 1s. for every gross for what he should earn at button making, was held not to amount to a hiring for a year (*u*). So where a party engaged to make 70,000 bricks, at so much for digging and turning, &c.,—though he engaged to serve from Michaelmas to Michaelmas, and did not furnish the bricks until after Michaelmas, yet as it was part of the agreement, that, as soon as he had made the 70,000 bricks, his master would have had no control over him, and he might have gone where he pleased, even if it had been a month before Michaelmas, it was held to be only a contract for an individual job, and not a hiring for a year (*x*). But where a party was “hired for a year to spin yarn, at 1s. 6d. a stone,” this was held to confer a settlement (*y*). So where the pauper was “hired for a year, good earn, good hire, to work to make screws, at so much per gross,” and nothing else passed between him and his master, this was held to be a good yearly hiring (*z*).

Retrospective Hirings.]—Where a party came into a service upon liking, and without any hiring, and after serving a few weeks then entered into an agreement to serve for a year, to commence from the time of his coming into the service, and the time he had already served to make part of, and be reckoned in the year; this was held to be a retrospective hiring, and not to gain a settlement; as a man cannot be hired to serve from a day past (*a*).

Hiring made to avoid a Settlement.]—Where the contract was really for a year, though ostensibly and colourably for a shorter time, this will not prevent the pauper from gaining a settlement,—as where the servant was hired for eleven months, and it was agreed between him and his master that he should give in a month's service beyond the eleven months; for the Court said, that the real question in this case was no more than whether eleven and one make twelve, and that the substance of the agreement was to serve for twelve months (*b*). But where a pauper was hired merely for the space of eleven months (*c*), or three days after Michaelmas till the Michaelmas following (*d*), or upon condition that he left his place a fortnight before

(*u*) *R. v. St. Peter's*, 1 Bl. 443. Bott, 356; *R. v. Martin*, 4 T. R. 257.
 (*x*) *R. v. Woodhurst*, 1 B. & Ald. 325. (*b*) *R. v. Milwich*, 2 Burr. S. C. 433;
 (*y*) *R. v. King's Norton*, 2 Str. 1139. 2 Bott, 306.
 (*z*) *R. v. Birmingham*, Doug. 333; (*c*) *R. v. Houghton*, 1 Str. 83; 10
 Cald. 77; 2 Bott, 217. Mod. 392.
 (*a*) *R. v. Ilam*, Burr. S. C. 304; 2 (*d*) *R. v. Mursley*, 1 T. R. 694.

the end of the year (*e*); in all these cases, the hiring was held to be ineffectual for the purposes of a settlement, notwithstanding the express intent of the parties was to prevent the pauper from being an incumbrance on the parish.

Conditional Hirings.—If the contract of hiring was for an entire year, but there was a provision, that in a given event it should be competent to either of the parties to put an end to, or suspend, the service for a part of the year; this will not defeat the settlement, if neither party availed himself of the condition, and the service was actually performed for the whole year (*f*). Thus a hiring for a year, with liberty for either party to determine the contract on giving a month's notice, is sufficient to confer a settlement (*g*). And the like, where the servant was hired for a quarter of a year, and if her master and she liked one another, she was to continue for a year (*h*). So, where the master reserved the right of dismissing the servant without notice, this, it was held, did not defeat the settlement (*i*). And where the master expressed his fear that the servant would not be strong enough, but told him he might try, this was also held to be a conditional hiring for a year; the condition being, the servant having strength enough to do the work (*k*). And the like, where the pauper was hired to serve from Michaelmas to Michaelmas, if the master had no sale, and if he should have a sale, the pauper was to go (*l*).

Exceptive Hirings.—But any limitation in the contract of hiring, as to the number of working days or hours, is an exceptive hiring, and will not gain a settlement. Thus, a hiring for a year, with liberty for the servant to be absent eleven or twelve days sheep-shearing (*m*), even though he undertook to find a fit man at his own expense to do his work during his absence (*n*), will not confer a settlement. So, a hiring, with liberty to let himself during the harvest month (*o*), although the servant engaged to make up the time after Michaelmas (*p*), or afterwards actually agreed to work for his master during the harvest month (*q*), has been held to be not a

(*e*) *R. v. Little Coggeshall*, 6 M. & S. 264.

(*f*) *R. v. Byker*, 2 B. & C. 114.

(*g*) *R. v. Atherton*, Burr. S. C. 203; Bott, 360.

(*h*) *R. v. Lidney*, Burr. S. C. 1; 2 Bott, 358.

(*i*) *R. v. Sandhurst*, 7 B. & C. 557.

(*k*) *R. v. Northwold*, 2 D. & R. 790.

(*l*) *R. v. Farleigh Wallop*, 1 B. & Ad. 366.

(*m*) *R. v. Empingham*, Burr. S. C. 791.

(*n*) *R. v. Arlington*, 1 M. & S. 622.

(*o*) *R. v. Bishop's Hatfield*, Burr. S. C. 439.

(*p*) *R. v. Twerrey*, 2 B. & Ald. 520.

(*q*) *R. v. Althorne*, 2 B. & C. 112.

hiring for a year. So, where the servant stipulated for a week every year to go and see his friends (*r*), or even for a holiday to go to his feast (*s*), or a pensioner for two days in each half year to go and receive his pension (*t*); in all these cases the agreement was held to defeat the settlement. Where also it was agreed that the servant was to do such quantity of work as was equal to a full day's work, and as soon as that was accomplished, he was to be at liberty to go where he pleased; this was held to be an exceptive hiring (*u*). And the like, where it was agreed that the pauper should do a full day's work on every working day, except on the *pay Saturdays*, which were every alternate Saturday, when it was the custom for the master not to require a full day's work (*x*). So it was held an exceptive contract, where the master told the servant when he hired him, "that he should not have work for him all the year round, particularly in the winter, and that when he had not work for him, he might get work from other people (*y*)."²⁰⁷ But where the pauper was hired to do the office of a servant for a year, and her master agreed that she might earn what she could by her own labour, this was held to be no exceptive contract (*z*).

The principle of holding that any limitation of the time for work will defeat the settlement has been carried so far, that, although a servant undertook to work from six in the morning till seven in the evening, which is one hour longer than the ordinary time of labour,—and reasonable work, one would think, that was sufficient for the strongest man,—yet this was held to be an exceptive hiring (*a*). But where a servant hired himself for five years at so much per week, "the hours of working to be from six o'clock in the morning until seven in the evening, and to be paid for all over-time," this was held to be not an exceptive hiring, but an hiring for five years absolutely; because the limitation as to working hours referred only to the amount of wages, and the servant could not lawfully refuse to work for his master during the over-hours, if required so to do (*b*). Where, however,

(*r*) *R. v. Rushulme*, 10 East, 325.

(*s*) *Reg. v. Threkingham*, 7 Ad. & E. 866.

(*t*) *R. v. Over*, 1 East, 599.

(*u*) *R. v. Gateshead*, 2 B. & C. 117, n.

(*x*) *R. v. Cowper*, 5 Ad. & E. 333.

(*y*) *R. v. Polesworth*, 2 B. & C. 715.

(*z*) *R. v. Chertsey*, 2 T. R. 37.

(*a*) *R. v. Frome Selwood*, 1 B. & Ad. 207. The principle, according to the doctrine laid down in this case, might be carried to an absurd extent; for, if a ser-

vant was to stipulate that he should not work more than sixteen hours a day, and have the remaining eight hours for rest and sleep, this agreement might be held to be an exceptive hiring, and to deprive him of his right to a settlement. It would have been surely more reasonable to hold the contract good, unless the limitation as to working hours was less than the usual time for labour.

(*b*) *R. v. Ossett*, 4 B. & Ad. 216.

the terms of hiring were, that the pauper was to work from six in the morning to seven in the evening, "and might make as much over-work as he chose," this was held to be an exceptive contract; because it was *optional* in the servant to do over-work, or not; although he, in fact, never did any over-work for any person but his master (c). But where the servant agreed to work for a year, "or to forfeit and pay to his master 1s. for each day that he should absent himself from his work, or not work a reasonable day's work;" this was decided to be not an exceptive contract, and that the stipulation as to forfeitures was intended not to give the servant liberty to work, or not, at his option, but merely to enforce his regular attendance (d). The question, indeed, whether a contract of hiring is exceptive, or not, depends upon whether the absence from the service, or the working beyond a certain number of hours, is *optional*, or not, on the part of the servant (e).

Where the contract of hiring for a year is absolute, any implied exception arising from the custom of the county, or of the particular trade, will not defeat the settlement; as, where the custom is not to work on Sundays or holidays, or beyond a certain number of hours in the day; the distinction in all these cases being, whether the contract is absolute, or whether the exception forms part of the contract (f).

There is some further anomaly in the law as to exceptive contracts, in the case of militia-men; which appears to have arisen from the unwillingness of the Court to hold that a man should lose his settlement by serving his country in the militia. For, although at the time of hiring, a servant may have stipulated to be absent for a month, to attend on his duty as a balloted man in the militia, this exception has been held not to defeat the settlement; because it was only one which the law would have implied, and what the master must have consented to (g).

Imperfect Apprenticeship.]—An imperfect contract of apprenticeship will not enure as a contract of hiring and service, so as to confer a settlement. And wherever it is apparent that the parties

(c) *R. v. Birmingham*, 9 B. & C. 925. There is certainly a very refined distinction between this case and the last; and Mr. Justice Taunton, who differed from the rest of the Court in *R. v. Ossett*, said that he was unable to distinguish them upon principle.

(d) *R. v. St. Helen's, Auckland*, 4 B. &

Ad. 718.

(e) *R. v. Norton Bavant*, 4 Nev. & M. 687.

(f) *R. v. St. Agnes*, Burr. S. C. 671; *R. v. Horwick*, 10 East, 489; *R. v. All Saints, Worcester*, 1 B. & Ald. 322.

(g) *R. v. Westerleigh*, Burr. S. C. 753; *R. v. Winchcombe*, Doug. 391.

intended to contract the relation of *master and apprentice*, and the contract, from any defect of form or substance, falls short of what it purports to be, it is not available as a contract of hiring and service. A contract of apprenticeship may be formed without using the word "apprentice;" for, where *teaching* on the part of the master, and *learning* on the part of the pauper, are the principal objects of the parties, the contract, notwithstanding there may be a service, is considered to be one of apprenticeship (*h*). It has been determined, however, in some cases, though these have been much shaken by the subsequent decisions, that if the word "apprentice" is not in the contract, and it is a contract to *serve* or *work* for the period of a year, it is then convertible into a contract for hiring and service. Thus, an agreement to work for three years, on condition of being taught to weave counterpanes, or make bricks, has been held to be such a hiring as would constitute the relation of master and servant (*i*).

The true criterion seems to be, after an examination of all the authorities, whether it was the *main object* of the parties, as collected from the terms of the contract, to constitute the relation of master and *apprentice*, or merely that of master and *servant*,—whether, in short, the working as a *servant* was *subsidiary* to the apprenticeship. Thus, where B. applied to A. to take him as an apprentice, and A. said that he would take no more apprentices, unless they would work on the land, as well as at the trade; upon which it was agreed that B. should live with A. three years, to *learn* the business of a carpenter, and to do any other work that should be required by A., who was to pay him certain weekly wages, and also for over-work; it was held, that this agreement was an imperfect contract of apprenticeship (*h*). But where a written agreement was entered into between the pauper and his father with R. L., by which the father, on behalf of the pauper, agreed that the pauper should serve R. L. in his business of a wheelwright from 2d December 1827 to 3d March 1830, R. L. paying at the expiration of the term 5*l.* to the pauper, and in the meantime finding him meat, drink, and lodging; the father finding him clothes, washing, and all other necessities; although the pauper stated that he served as an apprentice, it was held, that the agree-

(*h*) *R. v. Laindon*, 8 T. R. 379; *R. v. Crediton*, 2 B. & Ad. 493; *R. v. Edin-rale*, 10 B. & C. 739; *R. v. Combe*, 8 B. & C. 82; *R. v. Nether Knutsford*, 1 B. & Ad. 726.

(*i*) *R. v. Little Bolton*, Cald. 367; 2 Bott, 222; *R. v. Eccleston*, 2 East, 298; *R. v. Shinfield*, 14 East, 541.

(*k*) *R. v. Ighton*, 6 Nev. & M. 320; 4 Ad. & E. 937.

ment was one of hiring and service; as it contained no provision for learning or teaching, and the service of the pauper must be understood to have been performed under the agreement (*k*).

II. *Of the Service under the Contract.*

1. *Of connecting Services under different Hirings.*
2. *Of Dispensation with the Service.*
3. *Of Dissolution of the Contract.*

1. *Of connecting Services under different Hirings.*

By the statute 8 & 9 W. & M. c. 30, s. 4, no person shall be deemed to have a good settlement, "*unless such person shall continue and abide in the same service during the space of one whole year.*" But the law does not require that the hiring, and the service, shall be for one and the same year. A service, therefore, for an unbroken continued year, though under different hirings, is good, if *one* of the hirings be for a year (*l*); notwithstanding the first or the last hiring may be only a weekly hiring (*m*), or there may be only ten days service under the yearly hiring (*n*), or the services may be dissimilar (*o*), or one of the services may be under an invalid contract (*p*). But each of the contracts must create the relation of master and *servant*: a service under an imperfect contract of *apprenticeship*, cannot be connected with a service under a hiring as a *servant* (*q*). And there must also be no discontinuance in the service (*r*); therefore, where a servant was discharged, and after being away a fortnight was hired again, the services under these two hirings cannot be connected (*s*). But if the interval between the two services is less than a day, this will not work a discontinuance; therefore, although a servant quits his service, yet if he was hired again *on the same day*, these two services may be connected (*t*). And if there be a hiring from November to Michaelmas, and the servant continue in the service till the second day after Michaelmas, without any new agreement, and on that day hires himself again for a year; these two services may be coupled, by means of the service upon the intervening day (*u*).

(*k*) *R. v. Billingham*, 5 Ad. & E. 676.

(*l*) *R. v. Overton*, Burr. S. C. 549;
2 Bott, 366.

(*m*) *R. v. Ragworth*, Cald. 179; Bott,
378.

(*n*) *R. v. Adsom*, 5 T. R. 98.

(*o*) *R. v. Sutton*, 1 East, 656.

(*p*) *R. v. Dawlish*, 1 B. & Ald. 280.

(*q*) *R. v. St. Mary, Kedwally*, 2 B. &

C. 750.

(*r*) *R. v. Fillongley*, 1 B. & Ald. 319.

(*s*) *R. v. Caverswall*, Burr. S. C. 461;

R. v. Ross, *id.* 688.

(*t*) *R. v. Ellisfield*, Cald. 4; 2 Bott,

375; *R. v. Fifehead*, Burr. S. C. 116;

2 Bott, 371.

(*u*) *R. v. Sulgrave*, 1 T. R. 778.

If a servant marry during the first service, then he cannot gain a settlement under a subsequent hiring for a year; for he is, after marriage, incapable of making a fresh contract, so as to gain a settlement (*x*).

Where the Master dies or removes.—The death or removal of the master will not prevent the settlement, if the servant continues to serve the widow or executor of his master, or his successor in the farm, during the remainder of the year (*y*). But this proceeds not so much on the principle of connecting services under different hirings, as on the ground of the service with the executor, or successor of the master in the farm, being a *continuance* of the *same service*, and the contract with the first master not being dissolved; for, in the case of an executor, the law casts on him a privity of contract with his testator; and, in the case of the master's successor in the farm, this, if there is no new contract, is in the nature of a service to the first master; just as if he had commanded his servant to live with another for a certain time.

2. *Of Dispensation with the Service.*

Any absence of the servant from the service, whether at the beginning, the middle, or the end of the year, if with the consent of the master, or for an excusable cause, amounts to a dispensation, and will not prevent the settlement. Therefore, where a servant is away from *illness*, this being an absence occasioned by the visitation of God, and not through his own default, he must be taken to be all the while in the service of his master, notwithstanding the master deducts his wages for the period of his absence (*z*). This principle has been carried so far, that where the illness has been occasioned by the servant's own default—as where he got drunk, and fell off the shafts of a waggon and broke his leg—and had only served his master seven weeks before he met with the accident, and was afterwards incapable of work, this was held a dispensation (*a*).

So, where a servant did not come into his service until several days after his contract, and his master then received him (*b*); or where he was absent, at different times, without his master's leave,

(1) *R. v. St. Giles, Reading*, Cald. 54; *dington*, Burr. S. C. 675; 2 Bott, 312.
 2 Bott, 261. (a) *R. v. Sherrington*, 2 Bott, 322;
 (y) *R. v. Ladock*, Burr. S. C. 179; 4 Doug. 11.
 2 Bott, 277; *R. v. Ivinghoe*, 1 Str. 90; (b) *R. v. Grendon*, Cald. 359; 2 Bott,
 2 Bott, 293; *R. v. Hardhorn*, 12 East, 51. 264.
 (z) *R. v. Islip*, 1 Str. 423; *R. v. Mad-*

and his master received him again; this has been also held to amount to a dispensation (*b*), even though the servant stayed away thirteen weeks, and the master deducted a sum for his wages for the time of his absence (*c*). And the like, where the absence of the servant was occasioned by a committal to prison for misconduct, on the complaint of the master (*d*); or where he was imprisoned for a malicious trespass on the prosecution of another person (*e*). So where the master, at the expiration of eleven months, made a complaint against his servant, who was thereupon committed for one month, which did not expire till the end of the year; this was also held to be a constructive service for the whole year (*f*). And where the master turned his servant away before the end of the term, and paid him his full year's wages,—if the dismissal was for no just cause, and the servant was willing to stay (*g*),—this has been held, in many cases, to be a dispensation with the remainder of the service.

3. *Of Dissolution of the Contract.*

A dissolution of the contract may be effected either by the act of the parties, or by the act of law; but, in the first case, it must be by the act of *both parties*; the distinction between dissolution and dispensation being, that the one is effected by the consent of the master alone, while the other can only be by the *mutual consent* of both master and servant. The rule which has been adopted as the test, whether the circumstances attending the departure of a servant before the end of the year amount to a dissolution of the contract, or only to a dispensation of the service, is, whether the master had the power afterwards of compelling the continuance of the service; if he had not, there was an end of the contract; if he had, but chose to dispense with it, then it is a dispensation. Therefore, where the master, at the servant's request, gave him leave to go to another service before the end of the year, though he paid him his full wages, this is nevertheless a dissolution; for the master, in this case, parted with all control over the servant (*h*). And the same, where the master discharged the servant, paying him his full year's wages, and the servant went to work with another person for the remainder of the year (*i*). When the contract is once dissolved, it cannot afterwards be revived, so as

(*b*) *R. v. Hanbury*, Burr. S. C. 322; 2 Bott, 419.

(*c*) *R. v. East Shefford*, 4 T. R. 804.

(*d*) *R. v. Barton upon Irwell*, 2 M. & S. 329.

(*e*) *R. v. Coningsby*, 4 B. & Ad. 156.

(*f*) *R. v. Hallow*, 2 B. & C. 730.

(*g*) *R. v. St. Bartholomew, Cornhill*, Cald. 48; 2 Bott, 445; *R. v. St. Philip, Birmingham*, 2 T. R. 624; *R. v. Hardhorn*, 12 East, 51.

(*h*) *R. v. Thistleton*, 6 T. R. 185; *R. v. Mildenhall*, 12 East, 482.

(*i*) *R. v. Bray*, 3 M. & S. 20.

to be considered merely as a dispensation. Therefore where a servant, at the end of six months, was paid his wages to that time, and quitted the service; but after being away a fortnight returned to his former service, without coming to any new agreement with his master, and continued in such service seven months; it was held, that the last service could not be connected with the former one; as there was an absolute dissolution of the contract (*j*). And the same, where the servant returned to his former service after nine days' absence (*h*).

Where a servant, from whatever cause, and for however short a period before the year's service is completed, applies for and is paid his wages up to that time, and leaves or stays away for the remainder of the year, this amounts to a dissolution of the contract; as, where a servant, five days before the end of the year, on being taken ill, sent for his clothes and his wages, which his master sent, deducting for the five days; this was held to be a dissolution (*l*). So, where a servant, after being in his place eight months, voluntarily left his master's service to go to an hospital, and never returned; this was also held a dissolution, and not a dispensation, notwithstanding his master paid him his whole year's wages, without any deduction for his absence (*m*). These decisions somewhat interfere with the principle laid down in *R. v. Islip* (*n*),—that where the absence of the servant is occasioned by the act of God, it only amounts to a dispensation,—and can only be reconciled with that case by the distinction, that in those last cases, the dissolution of the contract was considered a *voluntary* act on the part of the servant.

Where the master and servant make a second contract inconsistent with the first, this operates as a dissolution of the first contract; as, where there was a yearly hiring operating as a hiring for a year, and on the first day of that service a fresh contract was made between the master and servant of a hiring for fifty-one weeks (*o*); or, where, during the service under a yearly hiring, a second agreement was made for another year, to commence immediately, at different wages, and for a different sort of service (*p*); but, not where the second contract is only conditional or executory, and the two contracts are not inconsistent with each other (*q*); or where there is only a change of wages in the second contract (*r*).

(*j*) *R. v. Ross*, Burr. S. C. 688; 2 Bott, 441.

(*k*) *R. v. East Kennett*, Cald. 562; 2 Bott, 451.

(*l*) *R. v. Whittlebury*, 6 T. R. 464.

(*m*) *R. v. Sudbrooke*, 4 East, 356.

(*n*) *Ante*, p. 845.

(*o*) *R. v. Bottesford*, 4 B. & C. 84.

(*p*) *R. v. Great Chiltern*, 5 T. R. 672.

(*q*) *R. v. Buckingham*, 5 B. & Ad. 963.

(*r*) *R. v. Overnorton*, 15 East, 347.

If a master insist upon turning his servant away, and lay down his wages then due, which the servant takes up, and then goes away, this is a dissolution; and the contract cannot be set up again by the servant, after an absence of six days, returning at the request of his master (*s*). And a settlement of wages, even the day before the year is ended, has been held a dissolution, where the servant requested his master's permission to go away altogether (*t*); or where he went away, contrary to the express request of his master (*u*). And the entering into another service, or offering himself to others as a servant, is an additional proof, after taking his wages, of the assent of the servant to the dissolution (*x*).

Where a master discharges his servant for reasonable cause,—as where he turns a female servant away for being pregnant,—this operates as a dissolution of the contract, although he pays her her full wages to get rid of her (*y*). And where a man servant was apprehended on a charge of bastardy, and was detained four days from his service, to which he did not return, and the master deducted a shilling from his wages for the four days; this also was held to be a dissolution; for it was by means of the servant's own act that he was incapable of completing the service, and the consequences of it were equivalent to a wilful absence (*z*). But where a servant, on the complaint of his master for misconduct, was committed to prison for nine days, and then returned and served out the year; in this case it was held, that the imprisonment did not dissolve the contract; as the master elected not to do so by continuing the pauper in his service, and it was under the authority of the contract that the master acted, when he punished him for misconduct (*a*). And the same principle was recognized in a subsequent case, where the master, at the end of eleven months, made a complaint against the servant, and he was committed to the house of correction for one month, which did not expire until after the end of the year for which the servant was hired (*b*).

(*s*) *R. v. Gresham*, 1 T. R. 101; 2 Bott, 326; *R. v. Clayhidon*, 4 T. R. 100; 2 Bott, 459; *R. v. Seagrave*, Cald. 247; 2 Bott, 321.

(*t*) *R. v. Ruaby*, 10 B. & C. 51; *R. v. Maidstone*, 12 East, 550.

(*u*) *R. v. Grantham*, 3 T. R. 754; *R. v. Upwell*, 7 T. R. 438; *R. v. Corsham*, 2 East, 303.

(*x*) *R. v. King's Pyon*, 4 East, 351;

R. v. Maidstone, 12 East, 550; *R. v. Leigh*, 7 East, 539.

(*y*) *R. v. Bampton*, Cald. 11; 2 Bott, 444.

(*z*) *R. v. Westmeon*, Cald. 129; 2 Bott, 447; *R. v. Northcray*, Cald. 562; 4 Doug. 243; 2 Bott, 450.

(*a*) *R. v. Barton on Irwell*, 2 M. & S. 329.

(*b*) *R. v. Hallow*, 2 B. & C. 729.

3. *Of the Place in which the Settlement is acquired.*

Although the law requires a hiring for a *year*, and a service for a *year*, yet a *residence* for *forty days* in any particular parish during such hiring and service, will complete the settlement; and it is not necessary that the forty days should be continuous, but it will be sufficient, if the servant reside forty days in the whole (*c*), provided such residence is *within the year* (*d*). It is under the 13 & 14 Car. 2, c. 12, that forty days' residence is required; by the seventh section of which statute it is enacted, that any poor person coming to settle in any parish, if likely to be chargeable, may be removed to the parish where he was last legally settled as a "servant for the space of forty days at the least." As a servant, however, may during the year reside forty days in several different parishes, it is held that the settlement will be in that parish where he *last* (*e*) completes a forty days' residence; as, for instance, if a servant reside part of the year in one parish, and part in another, at different times and intervals, making, when added together, more than forty days in each, he is settled in the parish where he lodged the last night (*f*); that is, where he passes the night as his place of rest (*g*). And if the forty days' residence be within the compass of a year, they need not be within one year from the time of making the yearly contract (*h*); provided the yearly contract is continued, or a new hiring for a year can fairly be presumed, it being indispensable that the party should have the character of a servant hired for a year, during the whole of the forty days' residence (*i*); nor is it necessary that the whole of the forty days' residence should be under the last year's hiring (*j*). The settlement may be gained, also, by the servant residing forty days in a parish where the master never lives, nor where he has any house or estate (*k*); neither is it necessary that the residence should have any relation to the duties of the servant; as where he sleeps at his father's house in a different parish from that where his master lives (*l*). But where a servant, after serving his master ten months in the parish where his master lived, was de-

(*c*) *Greenwich v. Longdon*, Burr. S. C. 243; 2 Bott, 398.

(*d*) *R. v. Denham*, 1 M. & S. 221.

(*e*) *Louess v. Langstephan*, Burr. S. C. 825; 2 Bott, 404.

(*f*) *R. v. Hulland*, Doug. 657; Cald. 118; 2 Bott, 288.

(*g*) *R. v. Ringwood*, *per Lord Ellenborough, 1 M. & S. 381; *R. v. Mildenhall*, 3 B. & Ald. 374.

(*h*) *R. v. Childe Okeford*, 3 B. & Ald. 809.

(*i*) *R. v. Apethorpe*, 2 B. & C. 892.

(*j*) *R. v. Findon*, 4 B. & C. 91.

(*k*) *St. Peter's, Oxford, v. Chipping Wycomb*, 1 Str. 528; 2 Bott, 275; *R. v. East Isley*, Burr. S. C. 722; 2 Bott, 402.

(*l*) *R. v. Undermilbeck*, 5 T. R. 387; *R. v. Dremerchion*, 3 B. & Adol. 420.

prived of his reason, and his father fetched him away and kept him in his own house for the remainder of the year; his settlement was held to be in the parish where his master lived, and not in that where his father resided; for his residence with his father could not in this case be considered as a performance of service with his master, as he was there, *diverso intuitu*, in order to recover from his illness (*l*). Where, however, the pauper, being hired to a master resident in L., and being incapacitated from actual service by illness, left L., and resided for the last forty days with his father in E., his master supplying him with victuals and medical attendance, it was held that no settlement was gained in L. (*m*).

Although the hiring be in an extra parochial place, yet a settlement may be gained under it by a service in a parish or township (*n*).

5. *Of Settlement by Apprenticeship.*

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| <ol style="list-style-type: none"> 1. <i>Of the Statutes.</i> 2. <i>Of the Contract, and the parties to it.</i> 3. <i>Of the Premium and the Stamp Duty.</i> | <ol style="list-style-type: none"> 4. <i>Of the operation of an imperfect Contract of Apprenticeship.</i> 5. <i>Of the Service and Residence.</i> 6. <i>Of serving different Masters.</i> 7. <i>Of the termination of the Contract.</i> 8. <i>Evidence of the Indenture.</i> |
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1. *Of the Statutes.*

By 13 & 14 Car. 2, c. 12, s. 1, two justices of the peace, upon complaint of the churchwardens or overseers of any parish, within forty days after any poor person coming to settle in any tenement under the yearly value of 10*l.*, may by their warrant remove such person to such parish where he was last legally settled as an *apprentice* for the space of forty days at least, unless he give sufficient security for the discharge of the parish, to be allowed by the justices. This provision *impliedly* made a residence by an apprentice for *forty days* in any one parish a sufficient settlement.

By 3 W. & M. c. 11, s. 8, if any person shall be bound an *apprentice* by *indenture*, and inhabit in any town or parish, such binding and habitation shall be adjudged a good settlement; although no notice in writing may have been delivered and published as required by the third section of the act, which made it necessary for such notice to be delivered to the churchwarden or overseer by any person

(*l*) *R. v. Sutton*, 5 T. R. 657.

(*n*) *R. v. St. Andrew, Holborn*, 2 Bott,

(*m*) *Reg. v. East Winch*, 12 Ad. & E. 408.

coming into a parish, in order to render the continuance of such person in the parish to be a settlement.

By 31 Geo. 2, c. 11, s. 1, the binding may be by “deed, writing, or contract, *not indented*, being first legally stamped.”

But by 4 & 5 Will. 4, c. 76, s. 67, no settlement can now be acquired by apprenticeship to the *sea service*, or to a householder exercising the trade of the seas as a *fisherman*, or otherwise, or by any person who at the passing of the act (14th August, 1834) was such an apprentice, in respect of such apprenticeship.

2. *Of the Contract, and the parties to it.*

1. *Age of the Apprentice.*

2. *Age, &c. of the Master.*

3. *Execution of the Deed.*

Execution of the Deed in the case of

Parish Apprentices.

4. *Term of Binding.*

The contract, we have seen, though it need not be by indenture, must, by the 31 Geo. 2, c. 11, s. 1, be by deed or writing legally stamped (*o*). And a contract of apprenticeship executed in a foreign country will enable the apprentice to gain a settlement in an English parish by residence and service there under the indenture; and no evidence of the law of the foreign country is necessary to show that the contract was valid by the law of that country, where the apprentice was of full age, and the contract was on the face of it a contract of apprenticeship (*p*).

Age of the Apprentice.—Although the parent of the apprentice is generally a party to the contract, an infant has nevertheless power to bind himself apprentice; the contract being presumed to be for his benefit (*q*). And it seems, that a child only seven years of age may be bound an apprentice, if he is in other respects fit for the employment (*r*). The above observations, however, do not apply to *parish apprentices*, the binding of which is regulated by various statutes, for which the reader is referred to a former part of this work, title *Apprentices* (*s*).

A *parish apprentice* cannot, by the 56 Geo. 3, c. 139, s. 7, be bound under nine years of age; and an apprentice in husbandry, a calling which requires more bodily strength than most other occupations, must, by the 5 Eliz. c. 4, be *above ten years* of age (*t*). Ap-

(*o*) For the amount of the stamp duty on instruments of apprenticeship, see the 55 Geo. 3, c. 184, Schedule, Part I, tit. *Apprenticeship*.

(*p*) *R. v. Closworth*, 6 Ad. & E. 286.

(*q*) *R. v. Arundel*, 5 M. & S. 257.

(*r*) *R. v. Saltram*, Cald. 444; 1 Bott, 717.

(*s*) See *ante*, p. 41.

(*t*) *R. v. Saltram*, Cald. 444; 1 Bott,

prentices to chimney sweepers must also, by the recent statute of 3 & 4 Vict. c. 85, ss. 3 and 5, be *sixteen years of age* (*u*).

Age, &c. of the Master.—The master may be also an infant under twenty-one; for such a binding is not absolutely void, but only voidable (*x*). And it is not material what the master's occupation is; for it has been held, that a female may be bound to a day labourer to learn housewifery (*y*). And, in the case of a parish apprentice, where even the master was fraudulently imposed upon the justices, as being a butcher, and it did not appear that he had ever killed meat after the binding, and was a man in needy circumstances, it was held that this would not prevent the settlement (*z*). An apprentice may also be bound by the same instrument to serve two masters successively; for it only requires one stamp (*a*). And it is not essential to the validity of the binding of a parish apprentice, that the child at the time of the binding is not resident in the parish from which he is bound (*b*), or that the master is not resident in that parish (*c*); provided the requisitions of the 56 Geo. 3, c. 139, ss. 1, 2, are complied with, by which it is enacted, that when an apprentice is bound from one parish into another, the indenture is not valid for the purpose of settlement, unless notice has been given to the overseers of the latter parish, before the indenture is allowed. But such notice will be presumed, if there is no evidence to the contrary (*d*); and the provision of this enactment does not extend to any *assignment* of the apprentice (*e*).

Execution of the Deed.—Notwithstanding the apprentice is an infant, he must nevertheless execute the deed (*f*); for (except in the case of parish apprentices) if the binding be by the act of other parties, without his own intervention, no settlement is thereby gained (*g*). Even a father has no authority to bind his infant son an apprentice, without his assent; although a special power is given by the statute of Elizabeth to parish officers to bind a parish apprentice, without

(*u*) See *ante*, p. 146, 147.

(*x*) *R. v. St. Petrox in Dartmouth*, 4 T. R. 196.

(*y*) *R. v. St. Margaret's, Lincoln*, Burr. S. C. 728; 1 Bott, 713.

(*z*) *R. v. Great Sheepy*, 8 B. & C. 74.

(*a*) *R. v. Louth*, 8 B. & C. 247.

(*b*) *R. v. St. George, Eaeter*, 3 Adol. & E. 373.

(*c*) *R. v. St. Nicholas, Nottingham*, 2 T. R. 726.

(*d*) *R. v. Whiston*, 4 Ad. & E. 607; *R. v. Witney*, 5 Ad. & E. 191.

(*e*) *R. v. Exminster*, 6 Ad. & E. 598.

(*f*) *R. v. Chesterfield*, 2 Salk. 479; 5 Mod. 329.

(*g*) *R. v. Cromford*, 8 East, 25; *R. v. Ripon*, 9 East, 295.

his assent, till he come of age (*h*). It is not essential, however, that the master should execute the deed (*i*), provided he assents to it (*h*). A printed indenture of apprenticeship executed on one day, but bearing date on another, is not void, under the statutes of 8 Ann. c. 9, s. 35, and 5 Geo. 3, c. 46, s. 19 (*l*).

Parish Apprentices.]—In the case of *parish apprentices*, the 43 Eliz. c. 2, s. 5 enables the churchwardens and overseers, or the greater part of them, by the assent of two justices, to bind poor children apprentices. And by 51 Geo. 3, c. 80, all indentures executed by two persons only, acting or purporting to act in the capacity of churchwardens as well as of overseers, shall be considered as valid, as if the same had been executed by distinct persons as churchwardens, and distinct persons as overseers. This act extends to parishes, where only one of the parish officers acts as churchwarden as well as overseer; an indenture, therefore, signed by this one, in conjunction with two others, has been held to be valid (*m*). And where an indenture was executed by *one* churchwarden and *one* overseer, and no evidence was brought to impeach it, by showing that it was executed by less than a majority of the proper officers charged with that duty, the indenture was held good; for, by custom, there may be only one churchwarden of a parish (*n*). So, where a *township* has no churchwardens, and maintains its own poor, an indenture executed by the overseers of the township is valid, although neither of the churchwardens of the *parish* join in the execution (*o*).

Where a local act incorporated certain proprietors by the name of “Guardians of the Poor,” with directions for appointing *directors* and *acting guardians*, who were empowered to bind out poor children apprentices; it was held, that a binding by the *directors* and *acting guardians* under the corporation seal was invalid as a corporate act, not being exercised by the true corporate name (*p*). The execution of the assignment of a parish apprentice by the steward of the master, who was living abroad, without any special authority for that purpose, was held bad; as the master himself ought to exercise a discretion as to assigning over his apprentice to another person (*q*). And it would seem, that a parish apprentice, according to the reasonable

(*h*) *R. v. Arnesby*, 3 B. & Ald. 584. B. & Ald. 200.
 (*i*) *R. v. Ribchester*, 2 M. & S. 135. (*n*) *R. v. Hinckley*, 12 East, 361; *R.*
 (*k*) *R. v. St. Cuthbert, Wells*, 5 B. & v. *East Shilton*, 1 B. & Ald. 275.
 Adol. 939. (*o*) *R. v. Nantwich*, 16 East, 228.
 (*l*) *R. v. Harrington*, 4 Ad. & E. 618. (*p*) *R. v. Haughley*, 4 B. & Ad. 650.
 (*m*) *R. v. St. Margaret's, Leicester*, 2 (*q*) *R. v. Spreyton*, 3 B. & Ad. 818.

construction of the 56 Geo. 3, c. 139, s. 1, cannot be bound to a person living abroad, although he may retain property in the parish (*r*).

The *assent* of the justices to the indenture must be given by their signing it; and as such assent is a *judicial* act, they cannot sign the indenture separately, but must be together when they affix their signatures (*s*); but one justice may sign alone, if he be present when the other signs (*t*). Where the apprentice is bound to a master residing in another county, the indenture must, under the 56 Geo. 3, c. 189, s. 2, be allowed by four *distinct* justices, two of one county, and two of the other (*u*). If the parish officers are parties to the indenture, it is sufficient if the justices sign it, merely; but where they are not parties to the indenture, but merely provide some portion of the premium, it must be *sealed*, as well as *signed*, by the justices, under the provisions of the 56 Geo. 3, c. 139, s. 11 (*x*); and the same where any expense is incurred by the parish (*y*). But this section applies to *children*, only; and therefore where a person above twenty-one years of age bound himself apprentice, and the premium was paid by the parish, it was not necessary to obtain the assent of the justices (*z*). An estate devised to a parish towards binding out apprentices is not a *public parochial fund*, within the meaning of the eleventh section; and, therefore, where the parish officers paid a premium with an apprentice out of a charity fund of this description, it was held that the indenture did not require the assent of two justices (*a*). And where the parish officers supplied an apprentice with clothes, who was bound out with a premium by the trustees of a charity, it was held also, in this case, that the assent of two justices was not essential to the validity of the indenture; as it was not an "expense incurred," so as to make it a case of binding by the parish officers, directly, or indirectly (*b*); and the same, where the premium with an apprentice was supplied by the subscriptions of private persons, aided by a small sum given by the overseers of three different parishes (*c*).

The 56 Geo. 3, c. 139, s. 1, requiring that the order of justices for the binding shall be referred to in the indenture by the date thereof, is compulsory; and, therefore, if such date be omitted, the indenture

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| (<i>r</i>) <i>R. v. Spreyton</i> , 3 B. & Ad. 818. | (<i>y</i>) <i>R. v. Mottishall</i> , 8 B. & C. 733. |
| (<i>s</i>) <i>R. v. Hampstall, Ridware</i> , 3 T. R. | (<i>z</i>) <i>R. v. St. John Bedwardine</i> , 5 B. & |
| 380. | Adol. 169. |
| (<i>t</i>) <i>R. v. Winwick</i> , 8 T. R. 455. | (<i>a</i>) <i>R. v. Halesworth</i> , 3 B. & Ad. 717. |
| (<i>u</i>) <i>R. v. Skipton</i> , 8 B. & C. 772. | (<i>b</i>) <i>R. v. Quainton</i> , 1 Adol. & E. 133. |
| (<i>x</i>) <i>R. v. Stoke Damarel</i> , 7 B. & C. 563; | (<i>c</i>) <i>R. v. St. Peter's, Hereford</i> , 1 B. & |
| <i>R. v. St. Paul's, Exeter</i> , 10 B. & C. 12. | Adol. 906. |

is void, and no settlement is gained by serving under it (*d*). And, where an apprentice is bound from one parish into another, notwithstanding they are both within the same county and jurisdiction, notice must be given to the overseers of the parish into which the apprentice is to be bound, pursuant to the directions of the second section of the 56 Geo. 3, c. 139 (*e*).

Term of Binding.—The 5 Eliz. c. 4, declared apprenticeships for less than seven years void; but that provision has been repealed by the 54 Geo. 3, c. 96; and indeed it was determined, previous to the passing of this last-mentioned statute, that binding an apprentice for a less term than seven years did not render the contract void, but only voidable by the parties themselves, if they should think fit to take advantage of it; and that it was neither void, nor voidable, by the parish, as to gaining a settlement (*f*). But where the sessions found that an indenture was *fraudulently* ante-dated, in order to evade the provisions of the 5 Eliz. c. 4, and obtain the benefit of a seven years' service by serving five, it was held that such an indenture would not confer a settlement, although the parish insisting on the settlement was not a party to the fraud (*g*).

3. *Of the Premium and the Stamp Duty.*

1. *Duty on the Premium.*

2. *Setting out the Premium.*

3. *Exemptions from the Duty.*

4. *Where the Duty does not attach.*

The proper stamp required to be impressed on an indenture of apprenticeship is a very essential part of the instrument; for where the duty is not paid, the indenture is void, and no settlement acquired.

Duty on the Premium.—By the 8 Ann. c. 9, s. 32, certain rates of duty were imposed on the premium, which are now altered and regulated by the 55 Geo. 3, c. 184, Schedule, Part I. But by *sect. 36* of the first mentioned statute, all indentures, where a premium is given with the apprentice, which are signed within the weekly bills of mortality, are required to be stamped within one month after the date. By *sect. 37*, every indenture entered into elsewhere in Great Britain is required to be stamped within two months after the date. By *sect. 38*, indentures executed within fifty miles from the limits of the weekly bills of mortality are required to be stamped within

(*d*) *R. v. Bawbergh*, 2 B. & C. 222.

(*e*) *R. v. Threlkeld*, 4 B. & Adol. 2 Bott, 496.

229.

(*f*) *R. v. St. Petror*, Burr. S. C. 248;

(*g*) *Reg. v. Barmiston*, 7 Ad. & E. 858.

three months, and if at a greater distance, within six months from the date. And by *sect. 39*, all indentures, which are not stamped within the respective times above mentioned, are declared to be void. Under this statute, it has been held, that an indenture, which was not stamped with the premium stamp within the time prescribed by the act, was altogether void, and that the apprentice gained no settlement by serving under it; notwithstanding it was stamped, at the time of its being produced in evidence, with the stamp required by the 55 Geo. 3, c. 184 (*h*). But an indenture of apprenticeship, where *no premium* is given, is not within the above provisions of the 8 Ann. c. 9; and, therefore, if it has the proper stamp affixed to it when it is offered in evidence, the Court will not inquire *when* the stamp was affixed, nor, if a penalty is incurred, whether the proper penalty was paid on stamping (*i*).

Setting out the Premium.]—By the 8 Ann. c. 9, s. 39, all contracts of apprenticeship, wherein shall not be truly inserted the full sum of money received, or in anywise directly or indirectly given, paid, secured, or contracted for, with or in relation to the apprentice, are declared to be void, and not available in any court or place, or to any purpose whatever. But, as the 40th *sect.* of this statute exempts an indenture from any duty, in respect of any premium paid with an apprentice, who is put or placed out at the common or public charge of any parish or township, or by or out of any public charity; and the insertion of the premium in the indenture was required for no other purpose but to ascertain the amount of the duty; the premium need not be set out, upon the binding of a poor apprentice (*h*).

But where the consideration expressed in an indenture was 4*l.* to be paid by a public charity, and the apprentice's mother privately agreed to pay, and did pay the master, after execution of the indenture, 1*l.* in addition; it was held that the indenture was void, by reason of this latter sum not being inserted in the indenture (*l*). Where, however, a stepfather agreed to pay a premium of 10*l.* which was inserted in the indenture, and the mother of the apprentice who was a married woman promised that he should receive something more, and afterwards gave 2½ guineas in addition, without the privity of the stepfather or the apprentice; it was held that the indenture was not void by reason of the omission to insert this latter sum; for,

(*h*) *R. v. Chipping Norton*, 5 B. & Ald. 412; *R. v. Church Hulme*, 5 B. & Adol. 1029, note.

(*i*) *R. v. Preston*, 5 B. & Adol. 1028.

(*k*) *R. v. Oadby*, 1 B. & Ald. 477.

(*l*) *R. v. Baildon*, 3 B. & Ad. 427; *R. v. Amersham*, 4 Ad. & E.

the mother being a feme covert, her promise was not binding; and even assuming that it was, there was no contract to pay a specified sum; so that it was impossible to insert in the indenture the sum to be paid by the mother(*m*). And where a sum of money was given by the apprentice's grandfather to the master to clothe the boy, before he entered upon his apprenticeship, this was held to be not such a consideration as the statute requires to be set out in the indenture; for the statute meant money given for the benefit of the master, and this was no part of the premium received by him(*n*).

Where the proper stamp is affixed to the indenture on the sum contracted for, and that sum is inserted in the indenture, but the whole sum is not actually paid to the master; that does not vacate the indenture; for not only the *full sum*, but *more* than the sum, for which the duty was payable, is inserted in the indenture(*o*).

Exemptions from Duty.—By 55 Geo. 3, c. 184, Schedule, Part I. the following instruments are exempted from duty: indentures or other instruments for placing out poor children apprentices by or at the sole charge of any parish or township, or by or at the sole charge of any public charity, or pursuant to the 32 Geo. 3, c. 57, for the further regulation of parish apprentices; and all assignments of such poor apprentices, provided there is no valuable consideration given to the new master or mistress, other than what may have been or shall be given by any parish or township, or any public charity. A voluntary annual subscription for putting out children apprentices, who were brought up at the charity school of a particular parish(*p*), and a bequest of money to put out children apprentices(*q*), have been considered as falling within the exception of a "public charity." And the assignment of a parish apprentice is held not to be within the 8 Ann. c. 9; and therefore it need not be stamped within two months, nor need the consideration be set out(*r*). But, where A. was apprenticed to B. by the trustees of a charitable fund, and the premium paid out of that fund; and A. served B. 3½ years, when, at A.'s request, B. verbally, and without the knowledge of the trustees, consented that A. should serve the remainder of the time with C., and agreed "to give to C. 6*l.*, as part of the 15*l.* paid as a premium on the binding of A., for taking him;" it was held that the

(*m*) *R. v. Bourton-upon-Dunsmore*, 9 B. & C. 872.

(*n*) *R. v. North Ouram*, Burr. S. C. 145; 1 Bott, 462.

(*o*) *R. v. Keynsham*, 5 East, 309.

(*p*) *R. v. St. Matthew, Bethnal Green*, Burr. S. C. 574; 1 Bott, 641.

(*q*) *R. v. Clifton-upon-Dunsmore*, Burr. S. C. 697; 1 Bott, 641.

(*r*) *R. v. Ide*, 2 B. & Ad. 866.

transfer was void, for want of an assignment stamp; for, whatever exemption belonged to the transaction originally, it was taken away when the master stood by himself, and made a transfer with which the charity had nothing to do (*s*).

When the Duty does not attach.—The indenture is only liable to the premium duty, where money, or money's worth, is given to the master by the friends of the apprentice, by way of premium; but not where meat, clothes, lodging, or other necessaries are to be provided by his friends (*t*); even though the master covenanted by the indenture to find these necessaries, and, before the execution of the indenture, the father of the apprentice agreed with the master to find the apprentice clothing and washing during the term (*u*). So, where the master stipulates for part of the apprentice's earnings, this is not a consideration within the meaning of the statute; for the master is by law entitled to the apprentice's earnings (*v*). And the like, where the apprentice covenanted to allow the master 2*s.* per week, and the pauper was to have wages to provide for himself; for, in this case, it could not be considered as a boon to the master, who, instead of having the labour of his apprentice for nothing, which he was entitled to have, agrees to pay him wages, deducting 2*s.* per week (*x*).

4. *Of the operation of an imperfect Contract of Apprenticeship.*

Where the parties to any contract *intend* to create the relation of master and apprentice, the contract can have no operation as to conferring a settlement, but as a contract of *apprenticeship*; and therefore if the contract, from any defect of form or substance, falls short of what it purports to be, it is not available as a contract of *hiring and service*. If it has not all the legal requisites of an apprenticeship, it is a perfect nullity; and the ingredients to constitute a hiring for a year, or a term of years, cannot be picked out of such a contract, so as by any service under it to entitle the party to a settlement. For an abstract of the law on this subject, see *ante*, p. 842, "*Imperfect Apprenticeship.*"

5. *Of the Service and Residence.*

An apprentice may (as a party in the case of a settlement by hiring

(*s*) *R. v. Fakenham*, 2 Ad. & E. 528.

(*t*) *R. v. Leighton*, 4 T. R. 732; 1 Bott, 556.

(*u*) *R. v. Aylesbury*, 3 B. & Ad. 569.

(*v*) *R. v. Wantage*, 1 East, 601; 1 Bott, 559.

(*x*) *R. v. Bradford*, 1 M. & S. 151.

and service) gain a settlement in any parish, where he has resided for forty days under the indenture; but he is not obliged, as in the case of a yearly servant, to serve for the term for which he is engaged, in order to acquire a settlement; a mere residence for forty days under the contract of apprenticeship being sufficient for that purpose. He may thus acquire various settlements in the different places where he abides with his master; but the place, in which he has last completed a forty days' residence under his indenture, by sleeping there the last night, is his last legal settlement (*y*). And, as in the case of a settlement by hiring and service, it is not necessary that the residence of the apprentice should be in the same parish where the service is performed; for, if he works by day in one parish, and sleeps by night in another, he obtains a settlement in the parish where he sleeps (*z*). There is this distinction between apprentices and servants: that an apprentice gains a settlement by the *binding*, and an *inhabitaney* of forty days under such binding; while the servant only acquires this right by a *hiring for a year*, and an actual or implied *service* for the same period, in addition to the other requisite of an *inhabitaney* for forty days. And as the service under a contract of apprenticeship has no reference to the term of a year, the forty days' residence need not be within the compass of any one year (*a*).

But, although the apprentice need not live in the same parish where he serves his master, in order to gain a settlement, yet a residence in another parish on account of illness, when he is incapable of performing any service, will not confer a settlement (*b*); nor a residence in another parish by indulgence, and merely for recreation, without any connection with the service (*c*), and where he is not under the eye and control of his master. And where an apprentice, not being wanted by his master, went back to school in another parish, it was held that this was not a residence under the indenture (*d*). So, where an indenture of apprenticeship stipulated that the master should provide meat, &c., during the term, except in the winter, when the ship to which the apprentice belonged should be laid by unrigged, at which time the apprentice should be maintained by himself or his friends, the master paying a compensation; and the apprentice accordingly during the winter resided with his parents in the township

(*y*) *R. v. Brighthelmstone*, 5 T. R. 188;
R. v. Ribchester, 2 M. & S. 135.

(*z*) *R. v. St. Peter's on the Hill*, 2 Bott,
524.

(*a*) *R. v. Aldstone*, 2 B. & Ad. 207.

(*b*) *R. v. Barnsby in the Marsh*, 7 East,
381.

(*c*) *R. v. Ilkeston*, 4 B. & C. 64.

(*d*) *R. v. St. Mary Breeding, Canterbury*,
2 B. & Ald. 382.

of B. for more than forty days, doing no work for his master ; it was held, that this was not a residence under the indenture, and conferred no settlement (*e*). But where an apprentice sleeps in another parish on account of illness, and is occasionally employed there by his master, in that case he gains a settlement in the parish where he sleeps (*f*), notwithstanding the employment may be illegal ; that is, provided the apprentice was not aware of the illegality (*g*) : and the like, where he is maintained in the other parish at the expense of his master (*h*).

Where an apprentice and his master were both on the permanent staff of the local militia, in consequence of which they resided together in the parish of B. for forty days, where the apprentice also served his master ; it was held, that this residence was sufficient to give a settlement, notwithstanding they were both under the control of their superior officers during the whole time (*i*). And where an apprentice to a mariner resided in a port more than forty days in the course of his trade, by sleeping every night during that time on board the vessel alongside the quay ; it was held, that he gained a settlement there, though his master in the mean time absconded from home (*k*). But by 4 & 5 Will. 4, c. 76, s. 67, no settlement can now be gained by apprenticeship to the sea service.

Where the master of an apprentice told him that he might go and work for O. in another parish during the remainder of his apprenticeship, and the apprentice accordingly worked with O. till within three weeks of the end of his apprenticeship, boarding and sleeping at O.'s house the whole time ; when O. told him he must leave him and seek work elsewhere ; upon which the apprentice went to the parish where his first master lived, and slept there one night, but had no intention of returning to his first master, nor had his first master any knowledge of his coming back to that parish ; it was held, that this could not be coupled with the previous residence in that parish, so as to confer a settlement, but was a mere casual residence, and not under the indenture (*l*). But where the pauper, who was an illegitimate child, resided with his mother and a man whom she married in B., and was maintained by them ; and while so resident he was apprenticed by a charitable institution to the mother's husband for

(*e*) *R. v. Brotton*, 4 B. & Ald. 84.

(*f*) *R. v. Stratford-upon-Avon*, 11 East, 176.

(*g*) *Reg. v. Somerby*, 9 Ad. & E. 310.

(*h*) *R. v. Foulness*, 6 M. & S. 351 ; *R.*

v. Linkinhorne, 3 B. & Ad. 413 ; *R. v. Banbury*, 3 B. & Ad. 706.

(*i*) *R. v. Chelmsford*, 3 B. & Ad. 411.

(*k*) *R. v. Topsham*, 7 East, 466.

(*l*) *R. v. Smarden*, 13 East, 453.

seven years to learn the trade of a bricklayer; and he resided with his mother and her husband, as before, during the seven years, but was never taught nor served in the trade of a bricklayer, but worked at odd jobs about the house when he liked, and sometimes did work in the trade of a potter, under contracts of hiring entered into by his master's consent with various persons in B., paying his master part of his wages for maintenance, and disposing of the rest as he chose; it was held, that the pauper gained a settlement by inhabitation in B. during the apprenticeship, under 3 & 4 W. & M. c. 11, s. 8 (*m*).

6. *Of serving different Masters.*

The new service must be referable to the Indenture.]—It is not necessary that the service during the forty days' residence should be with the same master, to whom the apprentice was bound; but where the service is under another master, there must be an express consent of the first master, to which the second must be privy, and the latter must employ the apprentice in the same capacity. Therefore, if the apprentice, during the term of his apprenticeship, is hired by another master as a yearly servant, such a service is not referable to the indenture, but to a contract of hiring as a yearly servant (*n*). The service under another master must be also a continuation of service under the same indenture. Therefore, where the apprentice is bound to the second master by a new indenture, without any recognition of the original indenture, he does not gain a settlement by a constructive service under the original indenture; for this is a service under a new contract of apprenticeship (*o*).

Consent of the first Master.]—Where an apprentice runs away and serves another master, although with the knowledge of his first master; this is not a service under the indenture, with the consent of the first master, either express or implied; for the mere knowledge of such second service doth not imply the consent of the first master (*p*). There must be a particular consent to a particular service; and therefore where a master told his apprentice that he had no further employment for him, and he might go where he pleased, and the apprentice on going away mentioned the name of the second

(*m*) *R. v. Burslem*, 11 Ad. & E. 52.
 (*n*) *R. v. Whitchurch*, 1 B. & C. 574;
R. v. Shipton, 8 B. & C. 88; *R. v. Ashby*
de la Zouch, 1 B. & Ald. 116.

(*o*) *R. v. Christowe*, 11 East, 95; *R.*
v. Ecclesfield, 6 M. & S. 174.
 (*p*) *R. v. Ideford*, Burr. S. C. 821; 2
 Bott, 413.

master; this was held to be not an express or implied leave and consent given by the master to the particular service, but a general quitting of the service, and leave to go where the apprentice pleased (*q*). But an express consent given to the second master, with a general leave to the apprentice, has been held sufficient; though the consent were not given till the apprentice had been in his second service for some time, but more than forty days before he quitted it (*r*).

In the case of parish apprentices, it is enacted by the 56 Geo. 3, c. 139, s. 9, that after the 1st October 1816, it shall not be lawful for any master or mistress to put away or transfer any parish apprentice to any other, or in any way to discharge or dismiss from his or her service any such apprentice, without such consent of justices as is directed by the 32 Geo. 3, c. 57, s. 7; and that no settlement shall be gained by any service, after such putting away or transfer, unless it shall have been performed under the sanction of such consent. Therefore, where a parish apprentice, bound for seven years to A., had served him for four years, when A. agreed with B., who carried on the same business in another parish, that the pauper should work for B., B. paying 5s. a week to A. out of the pauper's earnings; and the pauper accordingly went and continued to work for B. till the end of his apprenticeship, with the exception of ten days, when he was sent for by A. to assist him during illness; and B. paid A. at the rate agreed upon, deducting for the ten days' absence during A.'s illness; it was held, that this was a "putting away" of the apprentice, within the above enactment, and that as there was no consent of justices, no settlement was gained by the service under B. (*s*). And where a parish apprentice had served a second master, without any assent from the first, until the 1st October 1816, it was held, that a ratification by the master after that day, without the consent of the justices, could not render the prior service valid for the purpose of settlement (*t*). Where the apprentice has been assigned to a second master, the latter may consent to his serving a third master (*u*); but the assignee of an apprentice cannot give such consent, after the death of the first master,—unless, in the case of a

(*q*) *R. v. Crediton*, 1 East, 59; *R. v. St. Helen, Stonegate*, 1 East, 285.

(*r*) *R. v. Bradstone*, 2 Bott, 573.

(*s*) *Reg. v. Wainfleet*, 11 Ad. & E. 656.

(*t*) *R. v. Maidstone*, 5 Ad. & E. 326.

(*u*) *R. v. Tavistock*, Burr. S. C. 578; 2 Bott, 412; *R. v. Clapham*, Burr. S. C. 206; Bott, 559.

parish apprentice, he is an appointee within the meaning of the 32 Geo. 3, c. 57,—for an apprenticeship is a personal trust, and is determined by the death of either master or apprentice (*x*). And yet it has been held that the executor (*y*), or the widow of the first master, although she had not taken out administration (*z*), may consent to the apprentice serving a second master, so as to confer a settlement. An apprentice may gain a settlement by serving a second master, with the assent of the first, although the second master never knew of the previous apprenticeship; if the service be in other respects a good service under the indentures (*a*).

7. *Of the Termination of the Contract.*

By the act of the parties.—However the parties may intend to relinquish the connection of master and apprentice, and notwithstanding that intention is followed by an actual separation, yet the indenture will be still continued in force, as far as the question of settlement is concerned, unless it be formally cancelled, or given up by the master to the apprentice. Until that is done, therefore, the apprentice is not *sui juris*, and cannot gain a settlement, under a contract of hiring and service with another master (*b*). Thus, where an apprentice agreed to pay his master a sum of money for his discharge, and quitted his service, but left the indentures with his master until the money agreed for was paid; it was held, that the contract of apprenticeship was not thereby determined, and that a service under a second master, with the express consent of the first master, was a service under the indentures (*c*). But where an apprentice actually paid money for his discharge, but the indentures were not delivered up, though offered to the apprentice's father, who did not take them, because he thought it not material; it was held, in this case, that the indentures were vacated from the time the money was paid (*d*). Where the indentures are exchanged between the master and apprentice, upon the apprentice leaving his service, this amounts to a cancelling of them (*e*). But notwithstanding the master gives up the indentures to an apprentice, yet if the apprentice is under age,

(1) *R. v. Eakring*, Burr. S. C. 2; Bott, 3 T. R. 605; *R. v. Bow*, 4 M. & S. 383.
 541. (c) *R. v. Chipping Warden*, 8 T. R. 108; *R. v. Gwinear*, 1 Ad. & E. 152.
 (y) *R. v. Stockland*, Doug. 70. (d) *R. v. Harborton*, 1 T. R. 139.
 (z) *R. v. East Bridgeford*, Burr. S. C. 133; *R. v. Barnsley*, 1 M. & S. 377. (e) *R. v. St. Mary Kalendar*, Burr. S. C. 274; 2 Bott, 540; *R. v. Titchfield*, Burr. S. C. 511; 2 Bott, 630.
 (a) *R. v. Sandhurst*, 6 Ad. & E. 130.
 (b) *R. v. Holy Trinity in the Minorities*,

the contract is not dissolved (*f*); for, a contract of apprenticeship being in presumption of law for the benefit of an infant, it is a general rule, that it is equally for his benefit that the apprenticeship should not be dissolved; therefore, to render a dissolution valid, when the apprentice is under twenty-one, some evidence must be given to show that it is for his benefit; for the Court will not infer it (*g*). And even where an apprentice under age entered into the king's service, with the consent of his master, it was held, that this did not put an end to the indentures (*h*). But where the master leaves his house and runs away for debt, this is a case in which it is clearly for the benefit of the apprentice that the indenture should be put an end to; for if it was to continue, the consequence might be that the apprentice would remain in a state of ignorance and starvation (*i*). So where the indenture is cancelled by the consent of all the parties to it, namely, the master, the father, and the apprentice, the apprenticeship is vacated, notwithstanding the apprentice is under twenty-one (*j*). But, in the case of a *parish* apprentice, the master and the infant apprentice cannot, by their joint consent alone, without the consent of the parish officers, discharge the indenture (*k*); although, if the apprentice is of full age, the consent of the parish officers is not then necessary (*l*).

By Death.—Apprenticeship, being a personal trust between the master and servant, is determined by the death of either master or apprentice (*m*). Therefore the executors of the master cannot claim the services of the apprentice; although, if the master has covenanted to maintain him during the term, the executors are bound to perform that covenant. But with respect to *parish* apprentices, with whom no more than 5*l.* is given, it is provided by the 32 Geo. 3, c. 57, s. 1, that such covenant for maintenance shall not continue longer in force, than for three calendar months after the death of the master or mistress; during which time the apprentice is to continue to serve the executors, or such person as they shall appoint. Within those three months (by *sect.* 2) two justices of the peace, on application by the widow of the master, husband of the mistress, son, daughter, brother, sister, or personal representative of the deceased, may by indorse-

(*f*) *R. v. Sandford*, 2 Bott, 391.

(*g*) *R. v. Great Wigston*, 3 B. & C. 484.

(*h*) *R. v. Hindringham*, 6 T. R. 557.

(*i*) *R. v. Mountsorrel*, 3 M. & S. 497.

(*j*) *R. v. Weddington*, Burr. S. C.

766; 2 Bott, 545.

(*k*) *Id.*; *R. v. Austrey*, Burr. S. C. 441; 2 Bott, 542.

(*l*) *R. v. Ecclesal Bierlow*, Burr. S. C. 562; 1 Bl. 592.

(*m*) *R. v. Eakring*, Burr. S. C. 320.

ment on the indenture, direct the apprentice to serve out his time with the applicant, such applicant having lived with and been part of the family of the master or mistress at the time of his or her death; provided (by *sect. 5*) the apprentice was living with and made part of the family, or was in the actual employment of the original master or mistress, or of any subsequent master or mistress appointed under the provisions of the act, at the time of the death of such master or mistress. Under this statute it has been held, that a parish apprentice, who was not living at the time of his mistress's death with her appointee under the provisions of the act, although living with her son by her individual consent, could not gain a settlement in another parish, by serving another mistress with the consent of the son and assignee of the original mistress, given after her death; for the apprenticeship was at an end upon the death of the original mistress, unless continued in the precise manner directed by the act (*n*).

By Bankruptcy, &c.]—Before the 6 Geo. 4, c. 16, it was held, that the bankruptcy of the master did not discharge the apprentice from his indentures (*o*). But now by the 49th section of that statute, where any person shall be an apprentice to a party who becomes bankrupt at the time of issuing the commission, the issuing of such commission shall be and ensue as a complete discharge of the apprenticeship. And with respect to parish apprentices, with whom not more than 5*l.* has been given, it is enacted by the 32 Geo. 3, c. 57, s. 8, that two justices, on the application of the master to discharge such apprentice, by reason of his insolvency, or that he is so far reduced in his circumstances as to be unable to maintain or employ his apprentice, may inquire into the matter, and discharge the apprentice, if they find the allegation to be true.

8. *Evidence of the Indenture.*

The execution of the indenture must be proved by the party calling for it, although it come out of the hands of the adverse party (*p*); and if produced, it must appear to be properly stamped,—as well as any assignment by indorsement on the indenture,—unless it comes within the exceptions of the 55 Geo. 3, c. 184, Schedule, Part I. (*q*); and parol evidence cannot be received of an agreement to assign the

(*n*) *R. v. Sheepshead*, 15 East, 59. (*p*) *Gordon v. Secretan*, 8 East, 548.
 (*o*) *Buckington v. Shepton*, 2 Bott, 630; (*q*) See *ante*, p. 857.
 2 Ld. Raym. 1352.

apprentice, if it is reduced to writing (*r*). The recital in an indenture is not sufficient evidence that the premium was paid out of charity money; in order to exempt it from the stamp duty, that fact must be proved *aliunde* (*s*).

When the indenture of apprenticeship is in the possession of the appellants, the respondents cannot compel them to produce it, in order that an assignment thereon indorsed may be stamped, so as to be evidence on the hearing of the appeal (*t*).

By 56 Geo. 3, c. 139, s. 2, where an apprentice is bound from one parish into another, the indenture is not valid for the purpose of settlement, unless notice has been given to the overseers of the latter parish before the indenture was allowed by the justices; but the respondents, on an appeal against an order of removal grounded on such indenture, are not bound in the first instance to prove such notice; and if there be no evidence to the contrary, the notice will be presumed (*u*).

If it is shown that the indenture has been lost or destroyed, or cannot be produced, parol evidence may then be given of its contents; and, in the case of a parish apprentice, the entry in the register book directed by the 42 Geo. 3, c. 46, to be kept by the overseers, is (by *sect.* 3) declared to be sufficient evidence of the existence of the indentures, and of the several particulars specified in the register respecting such indentures, in case it shall be proved that the indentures are lost or destroyed.

What sufficient proof of the loss of the Indenture.—The loss or destruction of the indentures, however, must be satisfactorily proved before secondary evidence can be admitted of their contents. Such evidence has been held satisfactory, where it appeared that only one part of an indenture had been executed, that the apprentice and master were both dead at the time of the trial, and that an inquiry for the indenture had been made of the apprentice shortly before his death, who said that the indenture had been given up to him after the expiration of the apprenticeship, and that he had burnt it; and an inquiry had also been made of the daughter and sole executrix of the master, who said she knew nothing about it (*x*). So, where it appeared that an indenture, twenty-four years old, the expenses of which the overseers had paid, was sent to those overseers, and that diligent search had been made for it, *without success*, in the parish chest; the indenture

(*r*) *R. v. St. Paul's, Bedford*, 6 T. R. 452.

(*s*) *R. v. Skeffington*, 3 B. & Ald. 382.

(*t*) *R. v. Westoe*, 5 Ad. & E. 786.

(*u*) *R. v. Whiston*, 4 Ad. & E. 607;
R. v. Witney, 5 Ad. & E. 191.

(*x*) *R. v. Morton*, 4 M. & S. 48.

under these circumstances was presumed to be lost (*y*). So, where a witness proved, that he was apprentice at the same time with the pauper, and that he saw in his master's hand an indenture, which he understood to be the indenture of apprenticeship of the pauper, and that the pauper and himself were treated as apprentices; and it appeared that a fire happened about twenty years ago in the room in which the pauper then resided, and burnt everything he had, and that the father and mother of the apprentice were dead, as well as the master and his wife; and that no property or relatives of the master were to be found; this was also held sufficient evidence to found a presumption that an indenture was executed (*z*).

What not.]—But where a pauper, when his apprenticeship expired, asked his master for the indenture, who said it was with the overseers, and the overseers had searched for it and could not find it; this was held not sufficient evidence of the loss of the indenture, as the master was alive, and not subpoenaed (*a*). So, the declaration of a deceased apprentice, as to the loss of his indentures and their contents, was deemed inadmissible, where it did not appear that they had ever been in his possession (*b*).

6. *Of Settlement by Renting a Tenement.*

This description of settlement is founded on the 13 & 14 Car. 2, c. 12, s. 1, which confined the power of parish officers to remove poor persons within forty days after their coming to settle in any tenement under the yearly value of 10*l*. But the acquisition of this settlement has been of late years very much narrowed by recent acts of the legislature, as well in regard to the nature of the tenement, as to the contract of renting, and the occupation. As questions, however, must frequently arise in claiming a derivative settlement from a party, who gained one under the 13 & 14 Car. 2, c. 12 before that statute was altered, the whole law on this subject must be noticed.

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| <ol style="list-style-type: none"> 1. <i>Of the Statutes.</i> 2. <i>What is a Tenement.</i> 3. <i>As to the Renting or Tenancy.</i> <ol style="list-style-type: none"> (a) <i>Occupation as Servants.</i> (b) <i>Joint-tenants.</i> (c) <i>Tenancy at will.</i> (d) <i>The term of the Tenancy.</i> (e) <i>Taking of the Tenement by the Pauper.</i> | <ol style="list-style-type: none"> 3. <i>As to the Renting or Tenancy.</i> (cont^d.) <ol style="list-style-type: none"> (f) <i>The Annual Value.</i> (g) <i>Payment of the Rent.</i> (h) <i>Occupation.</i> (i) <i>Situation of the Tenement.</i> (j) <i>Residence.</i> (k) <i>Payment of Poor Rates.</i> 4. <i>Evidence.</i> 5. <i>Fraud.</i> |
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(y) *R. v. Stourbridge*, 8 B. & C. 96.
 (z) *R. v. St. Mary-le-Bone*, 4 Dowl. & Ry. 475.

(a) *R. v. Denis*, 7 B. & C. 620.
 (b) *R. v. Rawden*, 2 Ad. & E. 156.
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1. *Of the Statutes.*

Persons coming to settle in tenements under 10l. a Year.—By 13 & 14 Car. 2, c. 12, s. 1, upon complaint made by the churchwardens or overseers of any parish or place to any justice, within forty days after any poor person coming to settle in any tenement under the yearly value of 10l., any two justices of the division, where the person likely to be chargeable to the parish shall come to inhabit, may by their warrant remove him to such parish where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he give sufficient security for the discharge of the parish, to be allowed by the justices. By *sect. 2*, persons grieved may appeal to the sessions.

Persons going to work in Harvest, &c.—But by *sect. 3*, any person may go into any parish to work in time of harvest, or at any time to work at any other work, so that he carry with him a *certificate* from the minister of the parish, and one of the churchwardens, and one of the overseers, that he has a dwelling-house or place in which he inhabits, and hath left wife and children or some of them there (or otherwise as the condition of the person shall require), and is declared an inhabitant there. And in such case, if he shall not return to that place, when his work is finished, or shall fall sick or impotent whilst at work, it shall not be accounted a settlement, but two justices may convey him to the place of his habitation; and if he shall refuse to go, or shall not remain in the parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, any justice of the county may send him to the house of correction to be punished as a vagabond, or to the public workhouse, there to be employed in work or labour. If the churchwardens and overseers of the parish to which he is removed refuse to receive him, and to provide work for him, any justice of that division may bind them to the assizes or sessions, to be indicted for a contempt.

Prisoners and Toll-keepers.—By 23 Geo. 3, c. 23, s. 1, prisoners in the King's Bench prison gain no settlement by renting a tenement; nor (by 52 Geo. 3, c. 72) any person by residence in the forest of Alice Holt in Hampshire.

By 54 Geo. 3, c. 170, s. 4, no person shall gain any settlement by reason of residence in any parish, while he shall be detained or confined as a prisoner on any civil process, nor for any contempt; nor

(by *sect. 5*) any gate-keeper or toll-keeper of any turnpike road or navigation, or person renting the tolls and residing in any toll house of any turnpike road or navigation; nor (by *sect. 6*) any person by reason of residence in any house provided by any charitable institution, whilst maintained at the expense of such institution as an object of the charity.

Bonâ fide Renting and Payment of 10l. a Year.]—By 59 Geo. 3, c. 50, which began to operate on the 2nd July, 1819, no person shall acquire a settlement by reason of his dwelling for forty days in any tenement rented by him, unless such tenement shall consist of a house or building, being a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* hired by him at and for the sum of 10l. a year at the least, for the term of one whole year; nor unless such house or building shall be held, and such land occupied, and the rent for the same actually paid, for the term of one whole year at the least, by the person hiring the same; nor unless the whole of such land shall be situate within the same parish or township as the house wherein the person hiring such land shall dwell and inhabit. In the construction of this statute, it has been considered as applicable to every case, where a previous settlement had not been completely gained and established before the statute was passed; therefore, to enable a party to acquire a settlement under 13 & 14 Car. 2, c. 12, by a residence on a tenement for forty days, the residence must be complete before the 2nd July, 1819, the day from which the statute began to operate (*c*).

By the 6 Geo. 4, c. 57, s. 1, which began to operate on the 22nd June, 1825, the last statute of 59 Geo. 3, c. 50, is repealed; and by *sect. 2*, no person shall acquire a settlement by reason of settling upon, renting, or paying parochial rates for, any tenement not being his or her own property, unless such tenement shall consist of a separate and distinct dwelling-house or building, or of land, or of both, *bonâ fide* rented by him, at and for the sum of 10l. a year, at the least, for one whole year; nor unless such house or building, or land, shall be occupied under such yearly hiring, and the rent for the same to the amount of 10l. actually paid, for the term of one whole year at the least. And it is provided that it shall not be necessary to prove the actual value of such tenement.

In the construction of this statute, it has been held, that, as there

are no words in it which import that the *taking* of the tenement shall be subsequent to the time at which it came into operation, if a party therefore was previously in possession of a yearly tenement, and held it under such circumstances as the statute says should be requisite to gain a settlement, such settlement will be gained by connecting a holding before the statute with a holding subsequent(*d*). But where a party rented a tenement partly before and partly after the passing of the 6 Geo. 4, c. 57, it was held that no settlement could be gained, unless the provisions of the 59 Geo. 3, c. 50, were complied with during the operation of that act(*e*). And the repeal of 59 Geo. 3, c. 50, by the 6 Geo. 4, c. 57, does not operate as a reviver of the 13 & 14 Car. 2, c. 12, under which a residence of forty days on a tenement of the yearly value of 10*l.* was sufficient to gain a settlement(*f*).

By 1 Will. 4, c. 18, s. 1, no person shall acquire a settlement by reason of such yearly hiring, unless such house or building, or land, shall be actually occupied under such yearly hiring, in the same parish or township, by the person hiring the same, for the term of one whole year at the least, and unless the rent for the same, to the amount of 10*l.* at the least, shall be paid by the person hiring the same. And by *sect. 2*, when the yearly rent shall exceed 10*l.*, payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement.

By 4 & 5 Will. 4, c. 76, s. 66, no settlement shall be acquired by occupying a tenement, unless the person occupying the same shall have been assessed to the poor rate, and shall have paid the same in respect of such tenement for one year.

2. *What is a Tenement.*

The word “tenement” has been held to be one of such comprehensive meaning, as to include all *incorporeal hereditaments*, that is, any interest or profit that necessarily and immediately arises out of land. Thus, the renting of a *right of common in gross* has been held to be a tenement; because it is a matter of tenure, and a *præcipe* will lie for it(*g*). So, for the same reason, a *rabbit warren*, to kill rabbits; that being a pernanancy of the profits of the land by the mouths of the rabbits; and, moreover, a free warren is the subject of a family settlement(*h*). So, also, a *cattle-gate* is a tenement(*i*); or renting the

(*d*) *R. v. Datchet*, 9 B. & C. 981.

(*e*) *R. v. Ockley*, 1 B. & Adol. 818.

(*f*) *R. v. Carshalton*, 6 B. & C. 93.

(*g*) *R. v. Dersingham*, 7 T. R. 761;

R. v. Hollington, 3 East, 113.

(*h*) *R. v. Piddletrenthide*, 3 T. R. 772.

(*i*) *R. v. Whinley*, 1 T. R. 137.

hay-grass or after-math of a meadow (*j*); or the exclusive right of *cutting the rushes and flags* growing in a pond (*h*); or the *liberty to take sand and gravel* from the bed of a river (*l*). So also a *fishery* is a tenement; for trespass will lie for an injury to it, and it may be recovered in ejectment (*m*).

So the taking of the *tolls* of a *market* or a *bridge* will constitute a tenement, provided they are granted by deed; for tolls are not things which lie in tenure, but only in grant (*n*). And yet, in a recent case (*o*), the Court of Queen's Bench have decided that the renting of the tolls of a *ferry* under a *verbal agreement* was sufficient to confer a settlement; a decision which certainly does not seem very reconcilable with the doctrine laid down in the last case referred to. It is immaterial, that an act of parliament constituting a bridge company declares the shares of the proprietors to be personal estate; for this does not make the tolls less a tenement, in the hands of the person to whom they are demised (*p*). But now by the 54 Geo. 3, c. 170, s. 5, no gatekeeper or tollkeeper of any turnpike road or navigation, or person renting the tolls and residing in the tollhouse, can gain a settlement by reason of such renting or residence. But a tollkeeper is not by this enactment prevented from gaining a settlement, *aliunde*, by renting another tenement in the parish in which he keeps the toll (*q*).

So, the renting a *dairy of cows* to feed in particular lands belonging to the owner (*r*), was held to give a settlement, provided the land on which the cows were depastured was of the annual value of 10*l.* (*s*). And a contract merely for the privilege of milking two cows (*t*), or the hire of one cow for the season (*u*), provided they were fed in the pastures of the owner, has been held to be a sufficient tenement to gain a settlement. But the *contract* must be to feed the cows entirely with the *growing produce* of the land, and not partly with the growing produce and partly with hay (*x*); therefore, merely renting the milk of a cow to be kept by the owner, where it was not matter of bargain that she should be

(*j*) *R. v. Stoke*, 2 T. R. 451; *R. v. Brampton*, 4 T. R. 348.

(*k*) *R. v. All Saints', Cambridge*, 1 B. & C. 23.

(*l*) *R. v. All Saints', Derby*, 5 M. & S. 90.

(*m*) *R. v. Old Alresford*, 1 T. R. 358.

(*n*) *R. v. Chipping Norton*, 5 East, 329; *R. v. North Duffield*, 3 M. & S. 247.

(*o*) *Reg. v. Fladbury*, 10 Ad. & E. 706.

(*p*) *R. v. Bibworth*, 1 M. & S. 514.

(*q*) *R. v. Denbigh*, 5 East, 333.

(*r*) *R. v. Tolpuddle*, 4 T. R. 671.

(*s*) *R. v. Minworth*, 2 East, 198.

(*t*) *R. v. Stoke-upon-Trent*, 10 East, 496.

(*u*) *R. v. Darley Abbey*, 11 East, 280.

(*x*) *R. v. Sutton St. Edmund's*, 1 B. & C. 536; *R. v. Bardwell*, 2 B. & C. 161.

pasture fed, though she was in fact pasture fed, was decided to be not in strictness taking a tenement (*y*). Nor will any settlement be gained by having the milk and feed of a cow, unless the person having it had an interest as tenant or occupier therein, and not by mere licence (*z*). But where the pauper had the keep of a cow on his master's land, in part of his wages, and the cow failing in milk, he had two heifers kept for him in lieu of the cow; this was held to constitute a tenement (*a*). Where the pauper was to have, in addition to his wages, "twenty-one ewes going" with his master's flock; this was to be held to be no tenement, because his master's flock was fed from time to time upon growing produce and upon hay (*b*); but, where the term "going," in the county where the contract was made, meant that the sheep should be pasture fed, and the feeding on the pasture was worth 10*l.*; this was held to constitute a tenement (*c*).

In order to constitute a tenement with respect to any erection or building, it is necessary that the structure should be *affixed to* the soil. Therefore, a mill construed of woodwork placed on a foundation of brick, but not inserted in the brick foundation or annexed to it by cement, but resting upon it by its own weight alone, was held to be not such a tenement as would confer a settlement (*d*). And the like has been held, where the pauper rented part of the machinery of a mill; as a standing place for a carding machine (*e*), or pointing places or runners for manufacturing needles, whether screwed to the floor (*f*), or not (*g*).

What is a Tenement within the 6 Geo. 4, c. 57.—By the provisions of this act, we have seen that the *tenement* must consist of "a separate and distinct dwelling-house, or building, or of land, or of both;" in the construction of which words it has been held, that it makes no difference whether two or more of these descriptions of *tenement* be held, or only one distinct and separate one of either kind; all that is requisite being, that the tenement, in respect of which a settlement is claimed, shall be either one or another of those three descriptions, or several of any of them. For it was said, that, under the former acts, a *tenement* might consist of various parcels taken at different times, and that there was nothing in the new act to alter the

(*y*) *R. v. Oswald Twissell*, cited in *R. v. Sutton*, 1 B. & C. 535.

(*z*) *R. v. Ladgreville*, 10 B. & C. 899.

(*a*) *R. v. Benneworth*, 2 B. & C. 775.

(*b*) *R. v. Thornham*, 6 B. & C. 733.

(*c*) *R. v. Norton*, 3 B. & Adol. 543.

(*d*) *R. v. Otley*, 1 B. & Ad. 161.

(*e*) *R. v. Mellor*, 2 East, 189.

(*f*) *R. v. Tardibigg*, 1 East, 528.

(*g*) *R. v. Dodderhill*, 8 T. R. 449.

old law in that respect (*h*). Therefore, the occupation of two adjoining houses under one roof, although they have distinct outer doors and no internal communication, and distinct rents are paid for them, has been held to constitute a tenement, within the words of the statute (*i*). So, it has been held that the renting of a dwelling-house at one rent, and afterwards taking another dwelling-house or a separate building at another rent, though in a different part of the parish, may be connected so as to form a tenement, within the meaning of the statute (*h*).

Where the occupation was of the middle floor of a house, the access to which was by an outer door, and a flight of steps, which were appropriated to the occupier exclusively; but one of the rooms could not be approached but by crossing a passage on the middle floor, by which a tenant occupying the upper floor reached his premises; it was held, that this was an occupation of “a separate and distinct dwelling-house” within the meaning of the act (*l*). But, in a subsequent case, it was held that the occupation of a granary, which was over another building and under the same roof with it, was not a tenement within the 59 Geo. 3, c. 50, although it was accessible only by a ladder from the outside, and had no internal communication with the building below (*m*).

3. *As to the Renting or Tenancy.*

The statute of 13 & 14 Car. 2, c. 12, s. 1 does not absolutely require that there should be an occupation as *tenant*, but a mere *coming to settle* on a tenement; nor is the word “*renting*” to be found in that statute. It is true, that this settlement is most generally considered to be acquired by a *renting*, and occupation, in the character of tenant; because the renting shows the occupation to be independent, and for the convenience of the occupier, and not for that of the landlord. But the lawful occupation of a tenement of the annual value of 10*l.* by a party in his own right, has been held to satisfy the words “*coming to settle*.” Thus a licensed curate, residing in the rectory house for more than forty days before the passing of the 59 Geo. 3, c. 50, was held to gain a settlement, as a *coming to settle*,

(*h*) *R. v. North Collingham*, 1 B. & C. 578.

(*i*) *R. v. Macclesfield*, 2 B. & Adol. 870; *R. v. Iwer*, 1 Adol. & E. 228.

(*k*) *R. v. Tadcaster*, 4 B. & Adol. 703; *R. v. Gosforth*, 1 Ad. & E. 226; *R. v.*

Wootton, *ibid.* 232.

(*l*) *R. v. Great Usworth*, 5 Ad. & E. 261.

(*m*) *R. v. Henley-upon-Thames*, 6 Ad. & E. 294.

under the 13 & 14 Car. 2, c. 12 (*n*). But the purchase of a crop of growing oats, which ripened at different periods, was not held to be a holding as tenant, and therefore not to give a settlement; although he was more than forty days in reaping them (*o*).

It is the credit of *taking* a tenement of the value of 10*l.* a year, that enables a party to acquire a settlement; and therefore his settlement is not defeated by a surety engaging for the payment of his rent; for the *visible credit* is the grand point (*p*), and it is immaterial whether credit is given to the pauper for the rent, if he be the tenant of the whole premises (*q*). But there must be a *tenancy* to the amount of 10*l.* a year; therefore a tenancy of 8*l.* 8*s.* per annum in the parish of A., cannot be coupled with a freehold of the pauper let for 50*s.* per annum in the parish of B., so as to give a settlement in A. (*r*); or even with an occupation of freehold land of his own in the parish of A. (*s*). A foreigner, although he may not, being an alien, take a lease of a dwelling-house or shop, may still occupy a tenement of 10*l.* a year, and carry on his trade there like any other person; and has, therefore, that interest which may enable him to gain a settlement (*t*).

Occupation as Servants.]—If a master permit his servant to occupy premises, the occupation of which is necessarily connected with the service, this is not a coming to settle in the character of a *tenant*, and therefore will not confer a settlement. Thus, a coachman occupying apartments over his master's stables, or a gatekeeper, or gardener residing in a lodge in his master's grounds, does not thereby gain a settlement; because the occupation of the premises is necessary for the performance of the service, and is considered in law as the occupation of the master, and not of the servant (*u*). But a servant may be a tenant, if the occupation of the premises by him is unconnected with the service; for the service is then equivalent to paying rent, and his master, instead of giving him more wages, provides him with a house for his habitation (*v*). Therefore, where a person was hired as a bailiff at weekly wages, and allowed the feed of two cows in the pastures of his master; it was held, that the feeding of the cows, being above the yearly value of 10*l.*, conferred a settlement (*v*); for

(*n*) *R. v. St. Mary, Newington*, 5 B. & Ald. 481.

(*o*) *R. v. Bowness*, 4 M. & S. 210.

(*p*) *R. v. Butley*, Burr. S. C. 107; *R. v. Kegworth*, 2 M. & R. 22.

(*q*) *R. v. Hooe*, 4 East, 362.

(*r*) *R. v. South Bemfleet*, 1 M. & S. 154.

(*s*) *R. v. St. John's, Glastonbury*, 1 B.

(*t*) *R. v. Eastbourne*, 4 East, 103.

(*u*) *R. v. Seacroft*, 2 M. & S. 472; *R. v. Kelstern*, 5 M. & S. 136; *R. v. Chess-hunt*, 1 B. & Ald. 473.

(*v*) *R. v. Melbridge*, 1 T. R. 598.

(*w*) *R. v. Minster*, 3 M. & S. 276; *R. v. Cherry Willingham*, 1 B. & C. 626.

it was not necessary for the convenient performance of his service, that he should have the two cows. So, where a pauper, whose children were engaged to work for three years at a mill, removed with his family to a cottage rented by the mill-owner, C., for the convenience of families in his employ; and the bargain between him and C. was, that a stated weekly payment for the use of the cottage should be deducted from the children's wages; and the pauper, who was not himself in the service of C., continued to occupy the cottage for sixteen years, during all which time and after he quitted it, some one or more of his children continued to work at the mill; and he at last quitted without regular notice, in consequence of the sale of the cottage; it was held, that the pauper's occupation was as tenant, and not as *servant*, and was sufficient to gain a settlement (x). But where a pauper was hired by D. to take care of his stock on certain marshes, at 12s. a week wages, and the keep of a cow, and he was to occupy a house on the marshes rent free, which was always appropriated to the person who looked after the stock there, and the pauper was to go into the house at Michaelmas, and it was stipulated "that he should not be obliged to leave the house, unless he had notice to quit at Michaelmas;" it was held, that the occupation of the house was as *servant*, and not as *tenant* (y).

Joint-tenants.]—Under the 13 & 14 Car. 2, c. 12, it was held, that where two persons *jointly rent* a tenement, which when divided as to value will not give 10l. a year for each tenant, it will give no settlement to either (z); although one of the persons is merely joined in the lease as a surety, and the other alone occupies the premises (a). But where two persons are partners in a farm, on which they both reside, of the annual value of 20l.; then they both acquire a settlement, notwithstanding the farm was originally taken by one only, and he afterwards admitted the other as a partner (b). So, if a party rent one entire tenement, and jointly part of another, he will thereby gain a settlement, if the whole be of sufficient value (c).

But under the 6 Geo. 4, c. 57, which requires that the tenement shall consist of "a *separate and distinct* dwelling-house or building, or of land, or of both," and that "the house or building, or land, shall be *occupied under such yearly hiring*, for the term of one whole year;

(x) *Reg. v. Bishopton*, 9 Ad. & E. 824.

(y) *R. v. Snape*, 6 Ad. & E. 278.

(z) *Marden v. Burham*, Burr. S. C. 311.

(a) *R. v. Great Wakering*, 5 B. &

Adol. 971; *Reg. v. Aberdaron*, 1 Ad. & E. N. S. 671.

(b) *Little Tew v. Duns Tew*, Burr. S. C. 398; *R. v. Seamer*, 6 T. R. 554.

(c) *R. v. Tissington*, Burr. S. C. 499.

it has been held, that a settlement cannot be gained by renting and occupying a tenement *jointly with another person*; for that the act requires the party to have the house or building separately to his own use, and not jointly with any one else (*d*).

Tenancy at will.]—Although a party was not liable for the rent and taxes of the premises wherein he dwelt, but had a *permissive occupation* only, this has been held to confer a settlement (*e*); as the master of a charity school, who is removable from his office at pleasure (*f*); or where the occupation of part of the premises was given to the party out of charity (*g*). But a soldier, who had deserted, and remained concealed for seven weeks in a house which had been taken by his wife, was held not thereby to gain a settlement; for this was not a coming into the parish *animo residendi*, but only for the purpose of concealing himself from the search of those who had a right to his service (*h*).

The term of the Tenancy.]—The 13 & 14 Car. 2, c. 12, does not require that the party should come to settle permanently on the tenement, or that there should be an occupation for a whole year. Under that statute, therefore, the time for which the tenement was taken has been held to be unimportant, provided there was an occupation of forty days; thus, taking land from June to Lady Day following (*i*), or a house for five months (*k*), would be sufficient to confer a settle-

(*d*) *R. v. Caverswall*, 10 Ad. & E. 270. According to this decision, it would appear that although a lease is granted to two partners, as joint-tenants, of a separate and distinct dwelling-house at a rent of 100*l.*, and the whole is occupied by them, without any portion being underlet, neither the one nor the other would gain a settlement. Upon a careful examination, however, of the language of the 6 Geo. 4, c. 57, s. 2, it really does not seem, with great submission, that it can be interpreted to exclude *joint-tenants* from gaining a settlement, where each is liable for a portion of the rent to the amount of 10*l.*, and the other requisites of the statute are complied with. The 2d section declares, that no person shall acquire a settlement by renting a tenement, “*unless such tenement shall consist of a separate and distinct dwelling-house or building*” *bonâ fide* rented by such person, &c. Now can it be contended from these words, that the taking or renting must be the *separate and distinct taking or renting of one per-*

son? The words “*separate and distinct*,” manifestly apply to the *thing rented*, not to the *person renting*. And it certainly seems far more repugnant to the meaning of the statute, to hold, as in *R. v. Iver*, 1 Ad. & E. 228, that, notwithstanding these words, “*a separate and distinct dwelling-house*,” the tenement may still consist of *two dwelling-houses*,—than to hold that two joint-tenants may gain a settlement by jointly renting a separate and distinct dwelling-house, as they could before the statute; there being nothing in the act to alter the old law in that respect.

(*e*) *R. v. Chediston*, 4 B. & C. 230.

(*f*) *R. v. Lakenheath*, 1 B. & C. 531.

(*g*) *R. v. Fillongley*, 1 T. R. 458.

(*h*) *R. v. Ashton-under-Line*, 4 M. & S. 357.

(*i*) *Staunton v. Ulescroft*, Burr. S. C. 558.

(*k*) *St. Mathew's, Bethnal Green, v. St. Botolph, Aldgate*, Burr. S. C. 574.

ment. So, where a party resided in a house for a month on trial, and then took it for a year at the rent of 14*l.*, and, without any interruption in the residence, continued in it for the following month, and then went away, it was held that he thereby gained a settlement (*l*).

But by the 59 Geo. 3, c. 50, and 6 Geo. 4, c. 57, the tenement must be *bonâ fide* rented or hired for the term of *one whole year*. It is not, however, the less a renting for a year, because a stipulation is made that either party shall be at liberty to give three months' notice from any quarter-day to determine the tenancy (*m*); nor because the party, of whom the premises were hired, was himself only tenant from year to year; for that party had an interest which would continue beyond the year, unless something was done to determine it, *viz.* by giving six months' notice to quit (*n*).

Where a house and land were taken by lease "for the term of six months from the 1st January next, and so on for six months to six months, until one of the said parties shall give to the other of them six *calendar* months' notice in writing to determine the tenancy, at and under the rent of 13*l.* for every six months; the first payment to be made on the 1st July, 1830;" it was held, that the months here spoken of were shown by the context to be *calendar* months, and that this was a taking for a year, at least, by which a settlement might be gained under the 6 Geo. 4, c. 57, s. 2 (*o*).

Of the taking of the Tenement by the Pauper.—Under the 13 & 14 Car. 2, c. 12, an express contract for the tenement was not absolutely necessary, it being sufficient if the party resided thereon with the permission of the landlord (*p*). But by the 59 Geo. 3, c. 50, and 6 Geo. 4, c. 57, the tenement must be *bonâ fide* hired or rented by the party claiming the settlement (*q*).

The Annual Value.—Under the 13 & 14 Car. 2, c. 12, the settlement depends on the *yearly value* of the tenement, which is required to be 10*l.*, and not on the amount of the *rent*. The rent indeed may be, *primâ facie*, the measure of value; but, whether the rent is more or less than 10*l.* per annum, the *real yearly value* may be inquired into (*r*). Therefore, if a rent of 10*l.* was given in contemplation of improvements by the landlord, which were never made, and the

(*l*) *R. v. Helskam*, 2 B. & Ad. 620.

(*m*) *R. v. Hurstmonceaux*, 7 B. & C. 551.

(*n*) *R. v. Wainfleet, All Saints*, 8 B. & C. 237.

(*o*) *Reg. v. Chawton*, 1 Ad. & E. (N.S.)

247.

(*p*) *R. v. Netherseal*, 4 T. R. 258.

(*q*) *R. v. Kibworth*, 7 B. & C. 799.

(*r*) *South Sydenham v. Lamerton*, 1 Str. 57.

house was not worth such rent, no settlement could be gained (*s*). So, where a tenement was worth less than 10*l.* per annum, if let by the year, it was held to be not sufficient that it produced more than that sum, when let by the week; for where the statute speaks of the *yearly value*, it means the value of the tenement to be let by the year (*t*). But evidence is admissible that the annual value was greater than the yearly rent (*u*); though such evidence must be confined to the value during the *first* year, that is, when the pauper *came to settle* upon the tenement (*x*). In estimating the value of land, regard may be had to its increased value when the pauper entered upon it, by its having been previously ploughed and manured by the landlord, who on that account let it at double the usual rent (*y*); and this, notwithstanding the ploughing and manuring was *not finished* when the pauper entered upon it, provided the landlord, when the pauper took it, agreed to plough and manure it (*z*). But, although the increased value during a lease for a term of years is not to be regarded, yet, if the party be *tenant from year to year*, the value in any one year is sufficient; because a tenancy from year to year begins afresh every year, and is in point of law a new demise (*a*). If a chattel, not affixed to the freehold, be placed upon the land by the tenant, its value cannot be added to the rent of the land; but landlord's (*b*) fixtures, which are parcel of the freehold, may be taken into the valuation, although, without them, the tenement would not be of sufficient value to gain a settlement (*c*). And where furnished rooms were rented at 10*l.* a-year, and nothing was found either one way or the other as to the value of the furniture, the renting was considered sufficient (*d*). So where the pauper rented a ferry, with the use of the ferry boat and line, the Court of Queen's Bench would not presume that the value of the ferry would be insufficient without them, upon a case reserved which did not show such insufficiency (*e*). Where the landlord contracts to pay the rates and taxes, the amount so paid by him is not to be deducted in estimating the annual value of the premises, if the tenant agrees to pay a rent of 10*l.* a-year; for the amount of the rent reserved (all fraud apart) must be taken

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| <p>(<i>s</i>) <i>R. v. Southwold</i>, 2 Str. 1127; Burr. S. C. 140.</p> <p>(<i>t</i>) <i>R. v. Hollingley</i>, 10 East, 41.</p> <p>(<i>u</i>) <i>R. v. Bilsdale</i>, 2 Bott, 137.</p> <p>(<i>x</i>) <i>R. v. Aston</i>, 6 M. & S. 54.</p> <p>(<i>y</i>) <i>R. v. Ringwood</i>, 1 M. & S. 381.</p> <p>(<i>z</i>) <i>R. v. West Cramore</i>, 2 M. & S. 132; <i>R. v. Poulton</i>, 6 M. & S. 252; <i>R.</i></p> | <p><i>v. Huntsham</i>, 2 B. & Ad. 503.</p> <p>(<i>a</i>) <i>R. v. Bilsdale</i>, 2 Bott, 137.</p> <p>(<i>b</i>) <i>R. v. Londonthorpe</i>, 6 T. R. 377.</p> <p>(<i>c</i>) <i>R. v. St. Dunstan</i>, 4 B. & C. 686.</p> <p>(<i>d</i>) <i>R. v. Whitechapel</i>, 2 Bott, 84, 6th edit.</p> <p>(<i>e</i>) <i>Reg. v. Fladbury</i>, 10 Ad. & E. 706.</p> |
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as the criterion of the value of the tenement, under the statute of Charles the Second, without reference to the payment of the rates and taxes by the landlord (*f*).

The more recent statutes of 59 Geo. 3, c. 50, 6 Geo. 4, c. 57, and 1 Will. 4, c. 18, require that the tenement shall be *bonâ fide* hired or rented at and for the sum of 10*l.* a-year at the least; and by sect. 2 of 6 Geo. 4, c. 57, it is not necessary to prove the *actual value* of the tenement. If the actual rent therefore is 10*l.*, the real value is immaterial (*g*), unless a gross rent is paid for the occupation of land in two parishes; in which case the amount of the rent payable for the land in each parish must depend upon the relative quantity and quality of the land in each parish. Evidence therefore is in such case admissible, to show that the amount of the rent paid in respect of the annual value of the land lying in one of those parishes is sufficient to confer a settlement, notwithstanding the above provision of the 6 Geo. 4, c. 57 (*h*). But, under the three last mentioned statutes, it is no objection to the settlement, in respect to the amount of the rent, that the landlord has contracted to pay all the rates and taxes (*i*), or the tithes, to an amount which, if deducted from the rent, would reduce it below 10*l.*; and though it appear that the rent demanded would have been only 9*l.*, if the landlord had not so agreed (*k*).

Payment of the Rent.—By the 59 Geo. 3, c. 50, the *actual payment* of the whole rent was first rendered necessary for the purpose of gaining a settlement; and by that statute the payment was required to be *by the person hiring the tenement*. But these latter words are omitted in the 6 Geo. 4, c. 57; and consequently it was sufficient, under this statute, if the rent was paid by either the person hiring, or by any other person (*l*). But the 1 Will. 4, c. 18, s. 1 (*m*) again requires that the rent shall be paid *by the person hiring* the premises; and by the second section, where the rent is more than 10*l.* a-year, payment to the amount of 10*l.* is declared to be sufficient, for the purpose of gaining a settlement under the 6 Geo. 4, c. 57; this

(*f*) *R. v. Framlingham*, Burr. S. C. 748; *R. v. St. Paul's, Deptford*, 13 East, 320. But see now 4 & 5 Will. 4, c. 76, s. 66, *ante*, p. 870.

(*g*) *R. v. Ashfield*, 9 B. & C. 939.

(*h*) *R. v. Pickering*, 2 B. & Ad. 267.

(*i*) *R. v. Thurmaston*, 1 B. & Adol. 731. But see now 4 & 5 Will. 4, c. 76, s. 6, *ante*, p. 870, and *post*, p. 884.

(*k*) *Reg. v. St. John in Bedwardine*, 8

Ad. & E. 192.

(*l*) *R. v. Kibworth*, 7 B. & C. 790.

(*m*) It will be important to bear in mind the respective times from which these three statutes began to operate. The 59 Geo. 3, c. 50, took effect from the 2nd July, 1819; the 6 Geo. 4, c. 57, from the 22nd June, 1825; and the 1 Will. 4, c. 18, from the 30th March, 1831.

section is therefore so far retrospective (*n*); but the first section of 1 Will. 4, c. 18, is only prospective (*o*). And if the claim for a settlement is for a renting before the 22nd June, 1825, the time from which the 6 Geo. 4, c. 57 took effect, then the payment of the whole rent is necessary under the 59 Geo. 3, c. 50. In order to gain a settlement, the rent must be paid before any order of removal is made (*p*); that is, for the purpose of defeating such order of removal. But such order of removal does not prevent the party from acquiring a settlement by the subsequent payment of the rent. Thus, where a party occupied for a year a tenement in A. at the yearly rent of 10*l.*, and before payment of the full rent was removed to B. by an order, which was confirmed on appeal; and he afterwards removed to his house at A., and paid the remainder of the rent; it was held that he acquired a settlement in A., notwithstanding the previous order of removal (*q*); and that the confirmation of the order of removal showed only that he had not completed a settlement at the time of the order. It seems, that a discharge of rent by means of a distress upon the goods of the tenant is a sufficient payment of rent by the party hiring the tenement, under the 1 Will. 4, c. 18, s. 1 (*r*). But where a tenant assigned over his house and all his effects to a trustee for the benefit of his creditors, and the trustee paid the rent out of the proceeds of the sale of the effects, this was held to be not a payment of rent by the person hiring the premises, within the 1 Will. 4, c. 18 (*s*). So, where M. being tenant of premises from year to year, on a hiring from Martinmas at 10*l.* rent, payable half yearly, gave them up to the pauper in January, 1831, and the landlord agreed to accept him as yearly tenant from Martinmas to Martinmas on the above terms, if the pauper would be answerable for the current half-year's rent; the pauper agreed, and occupied accordingly from January, 1831, to October, 1832; at May-day, 1831, he paid 5*l.* rent for the preceding half-year, and at Martinmas the next half-year's rent of 5*l.*; in October, 1832, he gave up the premises to R., no rent having been paid since Martinmas, 1831, when it was agreed that R. should take his furniture and fixtures at 9*l.* 5*s.*, and in consideration thereof pay the landlord the rent due from Martinmas, 1831; the landlord agreed with the pauper and R. to accept R. as his tenant, and received an undertaking

(*n*) *R. v. Dursley*, 3 B. & Ad. 465.

(*o*) *R. v. Ruthin*, 5 B. & Ad. 215.

(*p*) *R. v. Amphyll*, 2 B. & C. 847.

(*q*) *R. v. Willoughby*, 5 Nev. & M.

457; 4 Adol. & E. 143.

(*r*) *R. v. St. Nicholas, Colchester*, 2 Ad. & E. 599.

(*s*) *R. v. Pakefield*, 4 Ad. & E. 612.

from R. to pay the rent as above stated; and at Martinmas, 1833, no rent having been paid, the landlord distrained, and sold the goods seized, which produced enough to pay the whole rent, there being among them part of the furniture left by the pauper to the amount of 5*l.*; but there was no specific account of the sum produced by these articles; under these circumstances it was held, that the rent due in respect of his occupation from Martinmas, 1831, could not be considered as having been paid by him, within the meaning of the 1 Will. 4, c. 18; and that he was not, during the entire half-year from Martinmas, 1830, to May, 1831, the *person hiring the premises*, within the meaning of that statute (*t*). Where a person hired and occupied a 10*l.* tenement for more than a year, and after his death the rent was paid out of the proceeds of the sale of his effects, it was held that he gained no settlement either under the 59 Geo. 3, c. 50, or the 6 Geo. 4, c. 57 (*u*).

Of the Occupation.—Under the 13 & 14 Car. 2, c. 12, a tenant at 10*l.* a year was held to acquire a settlement, although he let off part of the premises to undertenants (*x*). And, although the 59 Geo. 3, c. 50 requires that the *house or building* shall be *held*, and the *land occupied*, for the term of one whole year at the least, by the person hiring the same; yet as the statute applies a different expression to *land* and *houses*, requiring that the *house* may be *held* only, but the *land occupied*, it has been decided under this statute, also, that a party gained a settlement by renting a house, although he underlet part of it to lodgers (*y*); but not so with respect to *land* (*z*). The 6 Geo. 4, c. 57 requires that the premises, whether house, or land, shall be “occupied under such yearly hiring;” but these words are satisfied by the occupation of any person entitled under the tenancy created by the yearly hiring (*a*); for, as this last-mentioned statute omits the words “*by the person hiring the same*,” the occupation of a party, to whom the house or land is underlet, is a sufficient occupation *under the yearly hiring* (*b*). And where the pauper, ten days before the end of the year, quitted the premises, and locked up the house, leaving only some few of his things in it; this was held a sufficient occupation under the 6 Geo. 4, c. 57, s. 2 (*c*). Where a party took a

(*t*) *Reg. v. Melsomby*, 12 Ad. & E. 687.

(*u*) *R. v. Carshalton*, 6 B. & C. 93.

(*x*) *R. v. Newnham*, Burr. S. C. 756.

(*y*) *R. v. North Collingham*, 1 B. & C.

578; *R. v. Stow Bardolph*, 1 B. & Ad.

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(*z*) *R. v. Tonbridge*, 6 B. & C. 88.

(*a*) *R. v. Ditchet*, 9 B. & C. 176.

(*b*) *R. v. Great Bentley*, 10 B. & C. 520.

(*c*) *Reg. v. St. Mary Kulendar*, 9 Ad.

& E. 626.

house at a yearly rent, payable quarterly, the tenancy to be determined on a quarter's notice; and at the end of the first quarter he said the rent was too high, and that he should quit; upon which his landlady said, that if he would remain, she would take off 10s. per quarter, which was agreed to, and the agreement acted upon; and he remained to the end of the year; this was held to be an occupation for a year under the original yearly hiring (*d*).

The 1 Will. 4, c. 18, s. 1, requires that the house, or building, or land, shall be *actually occupied* under the yearly hiring by the person hiring the same, for the term of one *whole year* at the least. Under this statute, therefore, an occupation *in fact*, and not a constructive occupation, is necessary; consequently, where part of the tenement is underlet, it will not confer a settlement (*e*); for however short a period it is so underlet, and however small may be the sum paid in consideration of it (*f*). Even where the pauper hired two cottages, and occupied the whole of one, which was worth more than 10*l.* a year, yet having underlet the other, it was held that he gained no settlement; for that the subject-matter of demise, whatever it is, must now be entirely occupied by the party renting (*g*).

Where a tenant assigned over the lease of his house and land and all his effects to a trustee, for the benefit of his creditors, and the trustee sold all the effects, and also the crops then growing on the *land*, but the tenant occupied the *house* for the remainder of the year; it was held, that this was not an undivided occupation of the premises, within the meaning of the 1 Will. 4, c. 18, s. 1 (*h*). But, where the tenant of a house, who resided in it with his family, was in the habit of taking in persons to sleep in some of the rooms, letting sometimes a bed, sometimes half a bed, generally by the night, but occasionally for a week, in which case however the bed only was let, and the pauper reserved the right of putting another bed into the room; the lodgers having no right to the rooms by day, and the tenant having constant access to and control over the whole house, and keeping the keys of all the rooms; it was held, that this was an actual occupation of the dwelling-house, within the 1 Will. 4, c. 18, s. 1 (*i*). Although the first section of this statute is prospective only in its operation, it is held to apply to a case in which the occupation

(*d*) *Reg. v. St. Mary Kalendar*, 9 Ad. & E. 626.

(*e*) *R. v. St. Nicholas, Rochester*, 5 B. & Adol. 219.

(*f*) *R. v. St. Nicholas, Colchester*, 2 Ad. & E. 599.

(*g*) *R. v. Berkswell*, 6 Ad. & E. 282. *Quære tamen.*

(*h*) *R. v. Pakefield*, 4 Ad. & E. 612.

(*i*) *R. v. St. Giles in the Fields*, 4 Ad. & E. 495.

had commenced, but was not complete at the time of the passing of the Act (*k*). Where a pauper, but not his family, was removed from the tenement he occupied, by virtue of an order of removal, and he returned the same day and occupied the house under the original contract; it was held, that this was a sufficient occupation to gain a settlement under the 59 Geo. 3, c. 50; as all that the act required had been complied with, by taking the house for a year, holding it upwards of that period, and paying the rent (*l*). But where the party died before the end of the year, though only three days before it expired, it was held that he was prevented from acquiring a settlement under the 59 Geo. 3, c. 50, although his family remained in the house beyond the year (*m*). Under this statute, also, it was not necessary that the hiring and occupation should be for the *same year* (*n*); but the contrary has been held under the 1 Will. 4, c. 18, s. 1, which requires that the house, or building, or land, shall be actually occupied under such yearly hiring, for the term of one whole year (*o*). Where a soldier on duty took a house for a year, as a lodging for himself and his family, and resided thereon more than forty days, it was held that this was sufficient to gain a settlement; for he had the intention of coming to settle, subject only to the power of those who directed his movements (*p*).

Situation of the Tenement.—Under the 13 & 14 Car. 2, c. 12, the whole tenement was not required to be in the *same parish*; for, as the renting of a tenement of the prescribed annual value was all that was necessary to gain a settlement, the Courts held, that if a person rented several different tenements, making together the required amount, although situate in different parishes, this would not defeat the settlement, which would in such case be acquired in that parish where the party resided (*q*). But under the recent statutes, a settlement cannot be gained by renting tenements in *different parishes*. Thus by the 59 Geo. 3, c. 50, a party is restricted from acquiring a settlement in any parish, unless the tenement consists of a house, or building, *within such parish*, or of land *within such parish*, or of both. The 6 Geo. 4, c. 57, s. 2, also enacts, that no person shall acquire a settlement in any parish, “unless such tene-

(*k*) *R. v. St. Giles's in the Fields*, 4 Ad. & E. 495.

(*l*) *R. v. Barham*, 8 B. & C. 99.

(*m*) *R. v. Crayford*, 1 B. & C. 68;
R. v. Great Bolton, 8 B. & C. 71.

(*n*) *R. v. Stow*, 4 B. & C. 87.

(*o*) *R. v. Banbury*, 1 Ad. & E. 136.

(*p*) *R. v. Brighthelmstone*, 1 B. & Ald. 270.

(*q*) *R. v. Sandwich*, Burr. S. C. 44;
St. Lawrence v. St. Maurice, Burr. 588.

ment shall consist of a separate and distinct dwelling-house, or building, or of land, or of both, *bonâ fide* rented by such person, *in such parish.*" And the 1 Will. 4, c. 18, requires that the house or building, or land, "shall be actually occupied, under such yearly hiring, *in the same parish.*"

Residence.—It is necessary that the party should *reside* for forty days, either in the tenement, or in the parish (*r*) where it is situate, in order to gain a settlement; and if he be forcibly removed (*s*) from the tenement within the forty days, or be arrested and carried to prison in another parish, he gains no settlement, although his family may reside there more than forty days (*t*). But an occasional absence on business, with the intention of returning, if the wife and family of the pauper continue to reside on the premises, it seems, may constitute residence (*u*). Residence for thirty-three days, by a widow, cannot be coupled with a previous residence of sixteen days by her deceased husband, so as to gain a settlement; for, in order to acquire a settlement by residing on a tenement of the yearly value of 10*l.*, the party must stand in the relation of tenant to the property for forty days; and here there was no privity of contract, or of interest, between the pauper and her late husband (*x*). Where the pauper resided in different parishes for more than forty days at different intervals, during his occupation of a tenement in each of them, it was held that the settlement was gained where he passed the last night (*y*).

Payment of Poor Rates.—It has already been noticed (*z*), that by 4 & 5 Will. 4, c. 76, s. 66, no settlement can be acquired by occupying a tenement, unless the party shall have been assessed to the poor rate, and have paid the same in respect of such tenement for one year. And the payment must be by the party's own act; it is not sufficient that another person, without his authority, pays the rate for him (*a*).

4. Evidence.

A tenancy under a written contract may be proved by the payment of rent, without producing the written instrument; for the fact

(*r*) *R. v. Knighton*, 2 T. R. 48; *R. v. Wainfleet*, 8 B. & C. 229; *R. v. Kenardington*, 6 B. & C. 70.

(*s*) *R. v. Llanbedergoch*, 7 T. R. 105.

(*t*) *R. v. St. George, Southwark*, 7 T. R. 466.

(*u*) *R. v. Ditchet*, 9 B. & C. 183.

(*x*) *R. v. South Lynn*, 5 T. R. 664.

(*y*) *R. v. St. Mary, Lambeth*, 8 T. R. 240; *R. v. Ringwood*, 1 M. & S. 381.

(*z*) See *ante*, p. 870.

(*a*) *Reg. v. Bridgnorth*, 10 Ad. & E. 66.

of the tenancy may be proved by parol, without proving the terms of it (*b*). But, in order to negative the presumption of a tenancy arising from occupation, a written agreement, if there is one, must be produced (*c*). If a written agreement for letting a house is proved to have been lost, parol evidence may be given of its contents; but, if the agreement is proved to have been unstamped, then such parol evidence is inadmissible (*d*). If, in proof of a settlement by renting a tenement under 6 Geo. 4, c. 57, a writing not under seal be produced, demising land, and also professing to demise incorporeal hereditaments, at uncertain rent, evidence may be given to show how much of such rent the land was worth; and if the amount is 10*l.* a year, and the land has been occupied and rent paid, according to the statute, the settlement is good (*e*).

5. *Fraud.*

If the renting is colourable between the parties to the contract, or in any way fraudulent, the settlement will be defeated; and the same, if the overseers of a parish give the pauper money to pay his rent, not with a view to relieve, but only to get rid of him, and throw the burthen of maintaining him on another parish; thus, if a pauper rent a tenement in parish A., and upon application for relief to the officers of parish B., in which he is last legally settled, they give him a sum of money to pay his rent, solely for the purpose of enabling him to gain a settlement in A., this will be fraudulent, and will defeat the settlement in A. (*f*). But, where the husband of a pauper rented a house from year to year, and, on his death, the pauper told the landlord that she wished to pay the rent weekly, which she continued to do for nine months; and the attorney of the respondent parish, which had relieved her in the meantime, suggested her taking out letters of administration to her husband, which were accordingly taken out by the attorney, at the expense of the respondent parish, for the purpose of settling the pauper in the appellant parish; it was held, that as the widow was *bound by law* to take out administration, it was not to be considered a fraudulent transaction, although the sessions had found it so (*g*).

(*b*) *R. v. Holy Trinity Hall*, 7 B. & C. 611.

(*c*) *R. v. Rayden*, 8 B. & C. 708.

(*d*) *R. v. Castle Morton*, 3 B. & Ald. 588.

(*e*) *Reg. v. Hockworthy*, 7 Ad. & E. 492.

(*f*) *R. v. Tillingham*, 1 B. & Ad. 180.

(*g*) *R. v. Great Glenn*, 5 B. & Ad. 188.

It is difficult to perceive why the principle on which this case was decided should not equally apply to the last; for a man is as much *bound by law* to pay his rent, as to take out administration.

7. *Of Settlement by Estate.*

This species of settlement does not depend upon any term in a statute, but is an excepted case in the law, standing on the principle, that a party ought not to be removed from his own, but is entitled to the superintendence and care of his property, however small the annual value, and whatever interest he may have in the property, whether as owner in fee, copyholder, leaseholder, mortgagee, executor, or administrator, or in any other way by operation of law.

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1. *Of the Nature of the Property.*

The property must appertain to the realty, and be locally and visibly situated in the parish where the settlement is sought, and must also be such as will enable the party to take possession of it, as a house, land, or any other corporeal hereditament. Therefore a rent-charge, though arising out of freehold, will not give a settlement; for it does not give him a right to go and live upon the estate; and still less would the living upon a leasehold estate, on which the party merely happened to have a rent-charge (*h*). And if land is held merely as appurtenant to an office, in the nature of a yearly service, it will not give a settlement; as where, by an award for the division of common field lands, an allotment was made for the shepherd of the common sheep flock, who was hired by the year by the tenantry farmers of the manor; for all the interest which he had in the allotment, he took in his character of servant from year to year, and his enjoyment of the land was in lieu of wages (*i*). So, where a freeman of a corporation was entitled to a stinted common of pasture for cattle, and to cut peat, and to get limestone, which was never exercised by him, it was held not to be such an estate as would confer a settle-

(h) *R. v. Stockley Pomroy*, Burr. S. C. 762.

(i) *R. v. South Newton*, 10 B. & C. 838.

ment (*k*); for the right was a mere privilege, and not a tenement. So, also, where the burgesses of a corporation were entitled to receive such share of the rents of the corporation estates as the corporation thought fit to allow; and part of the estates had been open fields, upon which each burgess was entitled to a certain right of common, but were afterwards inclosed and let as farms; it was held, that this gave no settlement to any of the burgesses; for they had no right to occupy the land which had been let by the corporation (*l*).

2. *What Interest is sufficient to gain a Settlement.*

Infants.]—An *infant* living in a parish where he has an estate of his own, although only 4*l.* a year, has such an interest as renders him irremovable (*m*).

Executors, and next of Kin.]—An executor also gains a settlement, by residing on a leasehold estate devised to him by his testator (*n*), although it is under the value of 10*l.* a year (*o*), and he has not proved the will (*p*); and the husband of an executrix, under the like circumstances, also gains a settlement by residing on the property, because the interest vests in him by operation of law (*q*). So, also, a *sole* next of kin, the only child of an intestate, was held to have such an equitable interest in a leasehold tenement of the intestate, that she gained a settlement by residing forty days in the same parish, after the intestate's death; although she had not taken out letters of administration, and the widow of the intestate survived him, and died also without having taken out administration. But, if the *widow* of a man dying intestate does not take out administration to him, she does not acquire a settlement by residing on the property (*r*). The grant of letters of administration cannot operate by relation, for the purpose of rendering a person irremovable at a time past, who during that time *was* removable for want of such letters of administration (*s*). There is a great difference, however; between a *sole* next of kin, and where several persons in equal degree have all of them an equal right; for, where the widow, daughter, and son in law of an intestate, occupied together a leasehold house

(*k*) *R. v. Warkworth*, 1 M. & S. 473.

(*l*) *R. v. Belford*, 10 B. & C. 54.

(*m*) *R. v. Hasfield*, 2 Str. 1338.

(*n*) *R. v. Sandwich*, 2 Stra. 983.

(*o*) *R. v. Uttoxeter*, Burr. S. C. 538.

(*p*) *R. v. Stone*, 6 T. R. 295.

(*q*) *R. v. Ynyseyghanarn*, 7 B. & C. 233.

(*r*) *R. v. Barnard Castle*, 2 Ad. & El. 108.

(*s*) *R. v. Horsley*, 8 East, 405; *R. v. Widworthy*, Burr. S. C. 109.

for more than thirty years after his death, without any administration being taken out, neither of them gained a settlement (*t*).

Guardians in Socage.—A guardian in socage is entitled to the possession of his ward's property, and cannot be removed from it; for he has not the mere office or authority, but an interest in the ward's estate. Therefore, where a man seised of a freehold estate died intestate, leaving a widow and four infant daughters; and the widow resided on the estate for more than forty days before any of them attained the age of fourteen; it was held that she thereby gained a settlement (*u*). And the same rule applies to the guardian of an infant copyholder under fourteen years of age, where there is no custom of the manor for appointing a guardian (*x*). But the rule does not apply to the guardian of an infant, who is only entitled to an *equitable* estate; for guardianship in socage is merely incidental to the *legal* estate, coming by *descent* to an infant under fourteen (*y*). And a mere *natural* guardian, whose authority does not extend further than the custody of the infant's person, has no legal or beneficial interest in the land, and therefore does not gain a settlement by residing on the property; as, where an estate comes to an infant by *devise*, and not by *descent* (*z*). And the rule applies in no case, where the infant is above the age of fourteen years.

Trustees and Cestui que Trusts.—A *cestui que trust*, who lives upon the property more than forty days, acquires thereby a settlement. As, where an estate was devised to a wife during her widowhood, and then to be sold for the benefit of the children; and one of them, after the death of the widow, continued to live thereon; he was held to have gained a settlement (*a*). But, where there was a devise to the use of trustees in fee, in trust (after payment of debts) to receive the rents for the benefit of M. S., his wife and child, all or any of them, during his life, as they should think proper; and M. S., after the death of the testatrix, occupied a cottage in the township where the lands devised were situate; it was held that he did not thereby acquire a settlement, the rents and profits of the lands devised having been insufficient to pay the debts of the testatrix (*b*). Where, however, a testatrix devised a farm to trustees, upon trust, after payment of 40s. yearly to the poor, to pay the rents to a school-

(*t*) *R. v. Canford Magna*, 6 M. & S. 355; *R. v. North Curry*, Cald. 137.

(*u*) *R. v. Oakley*, 10 East, 491.

(*x*) *R. v. Wilby*, 2 M. & S. 504.

(*y*) *R. v. Toddington*, 1 B. & Ald. 560.

(*z*) *R. v. Sherrington*, 3 B. & Ad. 714.*

(*a*) *R. v. Natland*, Burr. S. C. 793; *R. v. Wivelingham*, Doug. 767; *R. v. Holm East Waver Quarter*, 16 East, 127.

(*b*) *R. v. Darlington*, 5 M. & S. 493.

master to be nominated by the trustees; it was held, that a school-master so appointed by them, who resided upon a schoolhouse, which was part of the farm so devised in trust, gained a settlement by such residence; for he was there in the character of a *cestui que trust*, residing upon what was for the time substantially his own (*c*).

Copyholder before Admittance.—Where the devisee of a copyhold estate took possession of it upon the death of the deviser, and resided thereon more than forty days, before he was admitted tenant of the property, it was held that he thereby gained a settlement; inasmuch as he had the substantial power over the land, and the officers of the parish had no right to remove him from what he had a right to enjoy (*d*).

Grant and Licence from the Lord of a Manor.—Where the lord of a manor made a *new grant* of a piece of the waste, where there was no custom stated for the lord to make such grant, it was held, that such a grant, being not a valid conveyance of the copyhold estate, would not confer a settlement (*e*). So, where the lord granted a *licence* to inclose a piece of ground, and to build a cottage thereon, in which the pauper lived a year and a half, it was held that this was not a sufficient estate to give a settlement; as it was a mere licence, and did not give any interest in land (*f*).

Estate in Remainder or Reversion.—Where the pauper became entitled as heir to a freehold house, which he let to a tenant, but undertook to make certain repairs on the premises, which while he was performing, he resided as a lodger in his tenant's house for more than forty days; it was held that he thereby gained a settlement (*g*). But a remainder-man must have a *present* interest in the property, to render him irremovable. Therefore, if a party has only an estate in expectancy, which implies a preceding estate of freehold in some other person, a residence for forty days will not give him a settlement (*h*).

Tenant in Dower.—A widow, before assignment of dower, has not such an interest in the land of which she is dowable, as to be irremovable from the parish in which the land lies (*i*).

(*c*) *R. v. Owersby le Moor*, 15 East, 356.

(*d*) *R. v. Thrucross*, 1 Ad. & E. 126.

(*e*) *R. v. Hornchurch*, 2 B. & Ald. 189.

(*f*) *R. v. Horndon on the Hill*, 4 M. & S. 562; *R. v. Hagworthingham*, 1 B. & C. 634.

(*g*) *R. v. Houghton le Spring*, 1 East, 247.

(*h*) *R. v. Willoughby*, 10 B. & C. 62; *R. v. Eatington*, 4 T. R. 177; *R. v. Ringstead*, 9 B. & C. 218.

(*i*) *R. v. Northweald Bassett*, 2 B. & C. 724.

Equitable Estate..]—An equitable estate is sufficient to gain a settlement; as where there is a conveyance to uses not executed, or on trusts stated on the face of the deed, in which case the one party has the equitable, and the other the legal estate; and such equitable estates are recognized by courts of law. Therefore, where a mortgagor in possession devised all his real and personal property to trustees, in trust to sell and apply the proceeds to pay his mortgage and other debts, and the residue to his wife for her own use; and after his death the wife resided in the parish where the land was situated, but not on the land; on which the trustees in fact resided, but did not sell, nor render an account; it was held, that the wife gained a settlement by such residence, although the land might not have been worth more than the principal and interest due on the mortgage (*h*). So, where the pauper conveyed all his freehold and personal estate to trustees, in trust to sell and receive the proceeds; and also covenanted, on request of the trustees, to surrender a copyhold estate to their use, and in the meantime to stand seised of the same in trust for them; and they were to stand possessed of the copyhold on the same trusts as the freehold, and of all the monies to arise by sale of the property, in trust to pay the pauper's creditors, and if there should be any surplus, to repay it to him; and while these trusts continued, and before the copyhold was surrendered, the pauper resided forty days in the parish where the copyhold lay, though not on the estate; it was held, that he acquired a settlement by such residence (*l*). But an equitable estate is very different from a mere equitable right to have a conveyance of the legal estate; and if there be any doubt as to what a court of equity will do, a court of law will in such case not take cognizance of any equitable estate (*m*). Therefore, where a ~~contract~~ agreement was made for the purchase of an estate, to be paid ~~by~~ by two instalments, the first to be payable within a few days after signing the agreement, and the last at the expiration of seven months; and the vendor was to make out a good title, on the payment of the last instalment, and then to convey the premises; but the purchaser was to be let into possession, upon payment of the first instalment; and the purchaser, after payment of the first instalment, was accordingly let into possession, and continued therein for a year and a half; but the last instalment was never paid, nor any conveyance executed, and the purchaser afterwards gave up the contract, upon receiving back

(*h*) *R. v. Aslackby*, 5 Ad. & E. 200.

(*l*) *R. v. Ardleigh*, 7 Ad. & E. 70.

(*m*) *Per Holroyd, J., R. v. Todding-*

ton, 1 B. & Ald. 560; *per Lord Ellenborough, C. J., R. v. Hornden on the Hill*, 4 M. & S. 562.

part of the first instalment; it was held, that under this contract the purchaser did not acquire an equitable estate, so as to gain a settlement (*n*); for the payment of only part of the purchase money does not give an equitable estate; and a purchaser has no right to go into equity, unless he has done, or offered to do, all that was necessary on his part to perfect his title (*o*). So, where a father, upon a parol agreement, advanced money to his son, on condition of his purchasing a piece of land and building a house thereon, which the father and mother were to occupy during their joint and separate lives, but not to dispose of the same; and the father, after living in the house three years rent free, died; it was held, that he had no equitable estate in the house, and that the occupation conferred no settlement; for he could not, by resorting to a court of equity, have obtained a conveyance of the legal estate (*p*). But an equitable estate may be acquired from possession taken under a bond from the legal owner to give possession of the estate; for the owner was so far bound by the bond, that he could not have recovered in ejectment (*q*).

Husband in right of Wife's Estate.—Where, upon the death of the tenant of leasehold property intestate, his widow took out administration, and one of his daughters and her husband lived several years upon the property along with the widow; this was held to give no settlement to the daughter's husband; for he had not such an equitable interest in the property, as would entitle him to go and live upon it, under the decree of a court of equity; being only entitled, in right of his wife, to call upon the administratrix to give an account of the estate and effects of the intestate (*r*). But where an estate is vested in trustees for the separate use of the wife, the husband may in that case gain a settlement by residence upon it; for the wife had a right to reside on the property, and to communicate that right to her husband (*s*). And the same, where the wife, as administratrix, is entitled only to the trust of a term (*t*). So, where a freehold estate descended to the wife and her sisters as coparceners, and the husband contracted to sell his wife's share, but the conveyance was not executed for more than forty days after their title accrued; it was held, that the husband, by residing in the parish where the property was situate, though without occupation, gained a settle-

(*n*) *R. v. Geddington*, 2 B. & C. 29;
S. P., *R. v. Llantilio*, 5 B. & C. 461.
(*o*) *R. v. Woolpit*, 4 D. & Ry. 456.
(*p*) *R. v. Standon*, 2 M. & S. 461.

(*q*) *R. v. Lopen*, 2 T. R. 577.
(*r*) *R. v. Berkswell*, 1 B. & C. 542.
(*s*) *R. v. Offchurch*, 3 T. R. 114.
(*t*) *Mursley v. Grandburgh*, 1 Str. 97.

ment (*u*). And though a woman, before marriage, purchases a tenement for less than 30*l.*,—which, under the 9 Geo. 1, c. 7, would confer no settlement upon herself,—yet if, after marriage, her husband resides on the premises, he thereby gains a settlement, which will be communicated to her (*x*); and the same, where a man marries a woman, who before marriage had become a yearly tenant of premises at a rent of less than 10*l.*, which, under the 59 Geo. 3, c. 50, would not have conferred a settlement upon herself (*y*); or where he marries the executrix of such a yearly tenant (*z*); because, in all these cases, the interest vests in the husband by operation of law. In order to make the husband tenant by the curtesy, there must be a seisin in fact in the wife; therefore, where a freehold estate descended to a married woman as heir at law, and she never reduced it into possession before she died, it would descend to her son, free from any claim of the husband (*a*), and would of course confer on him no settlement.

Estate in Mortgage.—A mortgagor in possession of the estate gains a settlement; because the mortgagee, notwithstanding the form of the conveyance, has, by law, only a chattel interest in the property, and the mortgage is only a security. But, after the mortgagee has got into possession of the estate, he then may gain a settlement (*b*). And where a cottage was leased for years, determinable on lives, and was conveyed by a woman and her husband in trust to raise 10*l.* by sale or mortgage, to be paid to a third person, with a clause for reassignment; and the parties continued in possession till the husband died, after which the wife married a second time, she retaining possession of the cottage; it was held, that the second husband gained a settlement by forty days' residence on the property, though the money did not appear to have been paid; for the conveyance in question was equivalent to a mortgage (*c*). But an estate conveyed absolutely to trustees to be sold, to pay mortgages and other debts, will not give to the party conveying it a settlement by a subsequent residence previous to the sale (*d*); for this is an immediate conveyance to trustees, and not a mortgage; and the party, after making it, had not a right to continue a moment in possession. So, where

(*u*) *R. v. Dorstone*, 1 East, 296.

(*x*) *R. v. Ilmington*, Burr. S. C. 566.

(*y*) *R. v. North Cerney*, 3 B. & Ad. 463.

(*z*) *R. v. Ynyseyhanarn*, 7 B. & C. 233.

(*a*) *R. v. Great Farrington*, 6 T. R. 679.

(*b*) *R. v. St. Michael's, Bath*, Doug. 630.

(*c*) *R. v. Edington*, 1 East, 288.

(*d*) *R. v. St. Michael's, Bath*, Doug. 630.

a leasehold estate was assigned by a man after his marriage, as a security for money lent, and after payment, in trust for the sole use of his wife; it was held, that he did not gain a settlement by residing on the property before payment of the money; for his residence was not in the character of mortgagor, as he had parted with his absolute interest in the premises (*e*). In like manner, where the mortgagee had taken possession of the mortgaged property, and the party entitled to the equity of redemption obtained permission of the mortgagee to live in one of the houses that was then untenanted: it was held, that he did not gain a settlement by such residence; for he was not in possession as owner, and had neither *jus in re*, nor *jus ad rem* (*f*). And where one of several mortgagors agreed verbally to sell his interest in the mortgaged premises for a sum which was paid him, and he afterwards joined in executing a release and assignment of all his interest in the property; it was held, that he gained no settlement by a residence in the parish where they lay, between the time of the agreement and the release (*g*).

Estate acquired by Possession.].—An estate acquired by more than twenty years' quiet possession will confer a settlement; for twenty years' possession is a title to a plaintiff in ejectment, as well as to a defendant. Therefore, where a man built a cottage upon the waste, without any licence of the lord, but who never disturbed him, and he lived in it for thirty years; and, upon his death, his daughter lived in the quiet possession of it for more than three years; it was held that she thereby acquired a settlement (*h*). And an inclosure of the waste, with occupation for twenty years, has been also held to give a settlement; though occasionally interrupted by the periodical perambulations of the lord and commoners, but without doing any thing else to assert their rights (*i*). So where the grantee of land, without conveyance, built a house on it, which he occupied for eighteen years only, it was held that he gained a settlement; for the strict rules to be observed on the trial of an ejectment ought not to be applied to settlement cases, nor ought the title to an estate to be determined by an order of removal (*k*). But it has since been held, that the mere adverse possession of a tenant at will of an estate of less than 10*l*. annual value would not confer a settlement, where there was only

(*e*) *R. v. Tarrant, Launceston*, 3 East, 226.

(*f*) *R. v. Catherington*, 3 T. R. 771.

(*g*) *R. v. Creggiana*, 2 Ad. & E. 536.

(*h*) *R. v. Wyley*, 1 Str. 608; *R. v.*

Bitton, Burr. S. C. 631.

(*i*) *R. v. Woburn*, 10 B. & C. 846;

R. v. Pensax, 3 B. & Ad. 815.

(*k*) *R. v. Butterson*, 6 T. R. 554; *R.*

v. Calow, 3 M. & S. 22.

possession for fifteen years (*l*). The undisturbed possession, however, for four years, under a claim of right to the property, where there was no fraud, in acquiring or retaining the possession, and where the pauper was warranted in concluding that he was entitled to the possession, has been held to give a settlement. Thus, where the father of the pauper's wife let a freehold cottage to the parish officers for 1000 years, who accordingly took possession of it, but afterwards placed the father in it, where he died, the pauper's wife having previously come to nurse him; and shortly after his death the pauper joined his wife, and laid claim to the cottage as his wife's property, and the parish officers, having mislaid the conveyance, could not withstand his claim, and the pauper resided there with his family for more than four years; it was held, that the pauper gained a settlement by such residence (*m*). But where a party, claiming under a lease for years determinable on three lives, held over, under the false pretence that one of the lives was continuing; it was held, that this was not such an adverse possession as would gain a settlement, even after twenty years' possession of the property (*n*).

3. *Of Estates purchased for less than Thirty Pounds.*

By 9 Geo. 1, c. 7, s. 5, no person shall be deemed to acquire any settlement, for or by virtue of any purchase of any estate or interest, whereof the consideration for such purchase doth not amount to the sum of 30*l. bonâ fide* paid, for any further or longer time than such person shall inhabit in such estate, and shall then be liable to be removed to such parish where he was last legally settled before such purchase.

Under this statute it has been held, that a party residing on an estate so purchased does not communicate any settlement to his children; for he himself acquires no real settlement, but is only irremovable from his own estate (*o*). But if a woman before marriage purchase a tenement for a sum under 30*l.*, her husband will acquire a settlement by a residence of forty days thereon, and such settlement will be communicated to his wife; for the estate vested in the husband by operation of law, and not by purchase (*p*).

What is a Purchase.—The word "purchase" in the statute is

(*l*) *R. v. Chew Magna*, 10 B. & C. 747.

(*m*) *R. v. Staplegrave*, 2 B. & Ald. 527.

(*n*) *R. v. Asbridge*, 4 Nev. & M. 477

(*o*) *R. v. Salford*, Burr. S. C. 516; Black. 433; *R. v. Martley*, 5 East, 40.

(*p*) *R. v. Ilmington*, Burr. S. C. 566.

not to be taken in the extended sense in which it is used in legal phraseology; for otherwise, no devise, or gift, or settlement on marriage would confer a settlement, unless there were a pecuniary consideration paid to the amount of 30*l.*; but the intention of the act was to prevent settlements by purchases for small money considerations. Therefore a conveyance from a father to a daughter, in consideration of natural love and affection, without any pecuniary consideration, is not a purchase within the act (*q*); nor even where part of the consideration is in money, if the estate itself is worth more than what is expressed to be paid (*r*). And though natural love and affection is not expressed in the deed, and a money consideration is specified, yet it will be presumed that natural love and affection formed an ingredient in the consideration (*s*). But, in order to gain a settlement by residing on an estate given to the party through natural love and affection, there must be a legal conveyance by deed. For where a father, in consideration of natural love and affection, and of 24*l.* which he owed his son, made over to him premises by *verbal agreement* only; it was held, that the son was a purchaser for less than 30*l.*, within the 7 Geo. 1, c. 7, s. 5, and gained no settlement; as he could not ground an equitable interest on natural love and affection; such interest, if he had any, resting alone on the pecuniary consideration, which was below 30*l.* (*t*). However small the pecuniary consideration may be,—unless it be clearly proved that the grant was intended to be a *voluntary* one,—it will be considered as a purchase under 30*l.* Thus, where a party claimed under a grant by the lord of the manor of part of the waste, which was under the value of 30*l.*, the fine being 1*s.*, heriot 1*s.*, and quit-rent 1*s.*; this was held not to be a free gift from the lord; for, if a person meant to make a free gift, he would not reserve a heriot or rent; and; consequently, it was a purchase, within the meaning of the statute (*u*). When A. built a house on the waste of a manor by *licence* from the lord, and then sold it to B., who sold it to C. for 30*l.*, who resided in it for five years, no adverse claim being made; it was held, that C. did not acquire by purchase an estate or interest sufficient to confer a settlement under the statute; for a mere *licence* to occupy does not operate as a grant, nor confer any legal title (*v*).

(*q*) *R. v. Marwood*, Burr. S. C. 386;
R. v. Ingleton, Burr. S. C. 560.

(*r*) *R. v. Upton*, 3 T. R. 251.

(*s*) *R. v. Hatfield, Broad Oak*, 3 B. & Ad. 566.

(*t*) *R. v. Piddlehinton*, 3 B. & Ad. 460.

(*u*) *R. v. Warblington*, 1 T. R. 241;

R. v. Hornchurch, 2 B. & Ald. 189.

(*v*) *R. v. Hagworthingham*, 1 B. & C. 634.

As to the Consideration.—The consideration for the purchase, in order to gain a settlement, must amount to “the sum of 30*l.* *bonâ fide* paid.” The expenses, therefore, of the surrender of a copyhold estate, paid by the purchaser to his attorney, do not form part of the consideration; but the fine to the lord does constitute a part of it (*x*). In order to show the real consideration, evidence is admissible of other considerations than those expressed in the purchase deed. Thus, where the purchase money mentioned in the deed was only 28*l.*, but the sum *bonâ fide* paid was 30*l.*, a settlement was acquired (*y*). And, although the parties to the deed are estopped from contradicting its provisions, yet the parish officers, who are strangers to the deed, are not so estopped. Thus, where it was recited in a conveyance, that the pauper had agreed to purchase a parcel of land of S. J., and had paid him two guineas for the same, but no conveyance thereof had yet been made, and then expressed that in consideration of that sum S. J. bargained and sold, &c.; it was held, that the appellant parish was not estopped by the recital in the deed from proving that the recital was not true, and that the two guineas were not paid or intended to be paid, and that the only object of the parties in executing the deed was to confirm the pauper’s title, and that he therefore gained a settlement under the deed as a voluntary conveyance (*z*). A purchaser for 39*l.*, although 30*l.* thereof was borrowed on mortgage of the premises, was held to give a settlement (*a*). So, the purchase of a cottage for 60*l.*, which was then under mortgage for 50*l.*, and payment afterwards of the 50*l.*, by means of borrowing the same, was held to confer a settlement; although the estate was mortgaged for 50*l.* the same day (*b*). But there must be an actual payment of 30*l.*, although it is immaterial how the party got the money to enable him to make the payment. Therefore, where the purchase was for 39*l.* 17*s.* 6*d.*, the premises being then under mortgage for 32*l.*, and the purchaser, upon payment of 7*l.* 17*s.* 6*d.*, was admitted into possession subject to the mortgage, this was considered to be only a purchase for 7*l.* 17*s.* 6*d.* *bonâ fide* paid, and to give no settlement (*c*). So, where the pauper purchased a messuage for 52*l.*, under an agreement that 40*l.* of the purchase money should be secured by mortgage of the messuage to the vendor; and the pauper, after residing in it some years, sold it for 60*l.* to another person, who paid the 40*l.* to the original vendor, and 20*l.* to the pauper, who quitted the messuage in less than forty days after the payment of the 40*l.* to the original vendor; it was held, that

(*x*) *R. v. Cottingham*, 7 B. & C. 603.

(*y*) *R. v. Scammonden*, 3 T. R. 474.

(*z*) *R. v. Cheadle*, 3 B. & Ad. 833.

(*a*) *R. v. Tedford*, Burr. S. C. 57.

(*b*) *R. v. Chailey*, 6 T. R. 755.

(*c*) *R. v. Mattingley*, 2 T. R. 12.

the pauper did not gain a settlement by such residence on the estate; for the payment made by the subsequent purchaser was for his own benefit, and not on behalf of the pauper (*d*).

Laying out money upon premises, after they are purchased for a sum under 30*l.*, will not enable the party to gain a settlement; for no money afterwards laid out can make the prior purchase of a greater value, than it really was at the time of making it (*e*).

4. *Of the Residence required.*

When the owner of an estate has resided forty days in the parish where it is situate, he thereby gains a settlement. But the mere possession of an estate, without residence, will not suffice. The residence need not be on the estate; but may be in any part of the parish where the estate is situate (*f*); nor need the residence be for forty days continuously; it is enough, if he has resided off and on for forty days (*g*).

By the 4 & 5 Will. 4, c. 76, s. 68, a party cannot retain a settlement acquired by estate, for any longer time than he inhabits within ten miles thereof. In order to constitute residence, there must, in all cases be an inhabitancy; and the wife's inhabitancy is not the inhabitancy of the husband (*h*). But it seems that an occasional absence on business, with the intention of returning, may constitute residence, where the wife and family of the party continue to reside on the premises (*i*).

8. *Settlement by serving an Annual Office.*

Statutes.]—By 3 & 4 W. & M. c. 11, s. 6, if any person, who shall come to inhabit in any town or parish, shall for himself, and on his own account, execute any public annual office or charge in the said town or parish, during one whole year, then he shall be adjudged to have a legal settlement in the same, though no notice in writing be delivered and published as is by the act previously required.

And by 9 & 10 Will. 3, c. 11, no person who shall come into any parish by any certificate, shall be adjudged by any act whatsoever to have procured a legal settlement in such parish, unless he shall really and *bonâ fide* take a lease of a tenement of the value of 10*l.*, or shall

(*d*) *R. v. Olney*, 1 M. & S. 387.

(*e*) *R. v. Dunchurch*, Burr. S. C. 553.

(*f*) *Ryalip v. Harrow*, 2 Salk. 534.

(*g*) *R. v. St. Nyott's*, Burr. S. C. 132.

(*h*) *Berkhamstead v. St. Mary*, 2

Bott, 51.

(*i*) *R. v. Ditchet*, 9 B. & C. 183.

execute some annual office in such parish, being legally placed in such office.

But now by the 4 & 5 Will. 4, c. 76, no settlement can be acquired by serving an office. It will be necessary, however, to inquire what the law in this respect was before that statute.

Nature of the Office.—The office must be executed by the party *for himself, and on his own account*; a deputy constable or tithingman, therefore, gains no settlement(*h*); but an *assistant overseer*, duly elected by the inhabitants of a parish pursuant to the 59 Geo. 3, c. 12, executes the office in his own right, and not as deputy of the principal overseer(*l*). And it is held that a party, who executes the office *by deputy*, is not prevented from gaining a settlement under the 9 & 10 Will. 3, c. 11(*m*). Under this last mentioned statute the party must be *legally placed* in the office, otherwise he gains no settlement(*n*). But this statute only applies to persons coming into a parish under a certificate. Therefore, where a person was chosen a tithingman at a court leet, and was ordered to be sworn into office within one month, but never was sworn in, and executed the office for a year; it was held, that he gained a settlement under the 3 & 4 W. & M. c. 11, s. 6, by the execution of the office *de facto*(*o*).

A person annually appointed by a corporation to serve the office of *town crier and bellman* executes an annual office, within the meaning of the statute(*p*); as well as a *bailiff* or *ale-taster* for a borough, nominated yearly at a court leet(*q*); or a *hog-ringer*, presented by the leet jury for the office, and duly sworn therein(*r*). So, also, the *collector of the land tax*, or the collector of duties on births and burials, is a public annual officer; for it is not necessary that the officer should be a *parish* officer; any annual office is sufficient, so that by the notoriety of it, it may be presumed that the parish had notice of the party being come into the parish(*s*). It is not necessary either, that the office should extend *throughout the parish*; the act only requiring the executing some annual office within the parish(*t*). There is some doubt, whether a *parish clerk* is an annual officer,

(*h*) *R. v. Winterbourn*, Burr. S. C. 520; Bl. Rep. 452.

(*l*) *R. v. Lee*, 8 B. & C. 655.

(*m*) *R. v. St. Maurice*, Burr. S. C. 34.

(*n*) *R. v. Strogursey*, 1 B. & Ad. 795; *Wingham v. Sellindge*, 2 Str. 1199; Burr. S. C. 223.

(*o*) *R. v. Corfe Mullen*, 1 B. & Ad. 211.

(*p*) *R. v. St. Nicholas, Hereford*, 10 B. & C. 832.

(*q*) *R. v. Whitchurch*, Burr. S. C. 365.

(*r*) *R. v. Whittlesea*, 4 T. R. 807.

(*s*) *R. v. Hammond*, 2 Bott. 157; *Bisham v. Cook*, 1 Str. 411.

(*t*) *R. v. Fittleworth*, Burr. S. C. 238.

within the meaning of the statute; it is, however, a *freehold* office, and it is upon that ground that a parish clerk gains a settlement (*u*).

But where a party is appointed at a court leet to serve an office until the holding of the next court, which is held *ad libitum*, and there is not an interval of a year between the two courts, he does not acquire a settlement; for the office is neither in its nature annual, nor is the appointment to it annual; and one or the other of these characteristics is absolutely necessary (*x*). So, also, no settlement is gained by serving an office, to which a local statute authorizes the appointment for a discretionary period (*y*). Where the pauper was appointed to the office of *pinder* by three occupiers of land within the parish, without any public meeting for that purpose, and such an office was previously unknown in the parish; it was held that he gained no settlement, for that it was not a public annual office, within the meaning of the act of parliament (*z*). So, where there was an appointment to the office of *pinder* for the town of F., which lay in several manors, and the appointment took place at a court for one of the manors only; it was held that no settlement was gained; as the homage of one manor cannot elect an officer for a parish which lies in several manors (*a*). The master of a workhouse, also, is not an office within the statute; for it merely arises out of a contract with the parish, which the parish officers, with the consent of the parishioners, are by the 22 Geo. 3, c. 83 enabled to make with any person for the maintenance and employment of the poor (*b*). It is true, that that statute calls it an office; but the 39th *sect.* provides that nothing contained in the statute shall alter or affect the settlement of any person (*c*).

The statute seems to have been intended to be confined to inferior annual offices known to the parish, such as constables, and the like; a *curacy*, therefore, is not a public annual office, within the meaning of the act (*d*); nor a *schoolmaster*, which is held to be not an office, but only an employment (*e*); nor an *organist* of a chapel appointed by a select vestry at an annual salary; this being an office created by the parties themselves, which they may put an end to at pleasure (*f*).

Time of serving.—Serving an office only a part of a year is not

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| (<i>u</i>) <i>R. v. Stogursey</i> , 1 B. & Ad. 795. | (<i>b</i>) <i>R. v. Mersham</i> , 7 East, 167. |
| (<i>x</i>) <i>R. v. Yalding</i> , 3 Dow. & Ry. 352; | (<i>c</i>) <i>R. v. Hambledon</i> , 4 B. & C. 459. |
| <i>R. v. Bow</i> , 8 T. R. 445. | (<i>d</i>) <i>R. v. Wantage</i> , 2 East, 65. |
| (<i>y</i>) <i>R. v. Middlesnich</i> , 3 Ad. & El. 156. | (<i>e</i>) <i>R. v. Milborne</i> , 2 Str. 1225. |
| (<i>z</i>) <i>R. v. Clizby</i> , 4 B. & Ad. 153. | (<i>f</i>) <i>R. v. St. George, Hanover Square</i> , |
| (<i>a</i>) <i>R. v. Newmarket St. Mary</i> , 3 Ad. & El. 151. | 5 B. & Ad. 571. |

sufficient to gain a settlement (*g*); and still less, the mere appointment to the office, without the execution of its duties (*h*).

Validity of Appointment.—Where a pauper was requested by the rector of a parish to perform the duty of clerk for a Sunday, which he did, and the rector afterwards said to him, “I shall appoint you my regular clerk and sexton, and to follow me in marriages and funerals;” and the pauper accordingly entered upon the office; but two of the parishioners having objected to the appointment, and the overseer refusing to pay the pauper his salary, the rector threatened him with legal proceedings, upon which the salary was paid, and the vestry afterwards increased it; and the pauper executed the office and received the emolument, residing in the parish for several years; it was held, that he was well appointed, and gained a settlement in the parish (*i*).

Residence.—If a churchyard lay in two parishes, the *sexton* may gain a settlement in that one in which he resided, although no part of the church lay within that parish (*k*). So the warden of a borough, or the constable of a city, which extends into several parishes, in like manner acquires a settlement in the parish in which he lived (*l*), or where he last resided forty days (*m*); for if part of the duties are executed in the parish, it is sufficient (*n*); but no settlement is gained, if the party resided wholly out of the parish in which the duties of the office are executed (*o*).

9. *Settlement by payment of Rates and Taxes.*

Statutory Enactments.—By 3 W. & M. c. 11, s. 6, if any person, who shall come to inhabit in any town or parish, shall be charged with and pay his share towards the *public taxes or levies* of the said town or parish, he shall be adjudged to have a legal settlement in the same. It was provided, however, by the 35 Geo. 3, c. 101, s. 4, that such taxes or levies must be paid in respect of a tenement of the yearly value of 10*l.*; the effect of which was, that this species of settlement was seldom relied on; because, if the tenement was of that yearly value, a settlement could be gained by merely renting it,

(*g*) *R. v. Fittleworth*, Burr. S.C. 238;
Cold Ashton v. Woodchester, Burr. S.C.
444.

(*h*) *R. v. Holy Cross*, 4 B. & A. 619.

(*i*) *R. v. Bobbing*, 5 Ad. & E. 682.

(*k*) *R. v. Liverpool*, 3 T. R. 118.

(*l*) *St. Mary v. St. Lawrence*, 19 Vin.

Ab. 379; 2 Bott, 156; *St. Maurice v. St. Mary, Kalendar*, 1 Burr. S. C. 27.

(*m*) *R. v. Amlwch*, 4 B. & C. 757.

(*n*) *R. v. St. Nicholas, Hereford*, 10 B. & C. 832.

(*o*) *R. v. Woodbridge*, 4 B. & Ad. 711.

without any payment of rates and taxes. But the subsequent statutes of the 59 Geo. 3, c. 50, requiring, that, in order to gain a settlement by renting a tenement, such tenement must be *bonâ fide* hired for one whole year at 10*l.* a year, and the rent actually paid, operated so as to revive the acquisition of a settlement by payment of rates and taxes; for, though the statute narrowed the means of gaining a settlement by *renting a tenement*, it did not affect the mode of acquiring a settlement by *payment of taxes*; and, consequently, the latter species of settlement might be acquired, whether the party had, or had not, complied with the requisitions of the 59 Geo. 3, c. 50 (*p*). The 6 Geo. 4, c. 57, however, imposes the same conditions to the acquisition of a settlement by *payment of parochial rates*, as it does to the gaining a settlement by renting a tenement (*q*); so that the gaining a settlement by payment of rates since the passing of the last mentioned statute, though not actually abolished, is very difficult to be acquired.

This species of settlement is not affected by the restrictions contained in the 1st section of the subsequent statute of 1 Will. 4, c. 18 (*r*); for that section confines its enactment to the *yearly hiring* of a dwelling-house, &c., and does not touch the acquiring a settlement by payment of rates, therefore, notwithstanding the restriction of this last statute, a settlement may still be gained by payment of rates, although part of the tenement is underlet; provided the requisites of the 6 Geo. 4, c. 57, s. 2 are complied with (*s*). The 2d section, however, of the 1 Will. 4, c. 18, declares, “that where the yearly rent shall exceed 10*l.*, payment to the amount of 10*l.* shall be deemed sufficient for the purpose of gaining a settlement under the said recited act (*t*),” which, as it applies to both kinds of settlements, necessarily includes within its provision a settlement by payment of rates; and therefore a settlement may be acquired by payment of rates, if the pauper has paid rent to the amount of 10*l.*, although he has not paid the whole year’s rent (*u*).

By 9 Geo. 1, c. 7, s. 6, no person who shall be assessed to the *scavenger’s rate*, or to the repair of the *highways*, and shall duly pay the same, shall be deemed to be settled thereby. And by 43 Geo. 3, c. 161, s. 59, the payment of the *assessed taxes* by any person in any

(*p*) *R. v. St. Pancras*, 2 B. & C. 122; 308.

R. v. Penryn, 4 B. & Adol. 224.

(*q*) See *ante*, p. 869.

(*r*) See *ante*, p. 870.

(*s*) *R. v. Stoke Damerel*, 6 Ad. & E.

(*t*) 6 Geo. 4, c. 57.

(*u*) *Reg. v. Brighthelmstone*, 1 Ad. & E. N. S. 674.

parish or place shall not entitle him to a settlement in such parish or place.

What Rates and Taxes are within the Statutes.—It has been decided, that the *land tax* (*u*) is within the meaning of the 3 W. & M. c. 11, s. 6; for, though not applicable to a parochial purpose, it is nevertheless one of the public taxes or levies of the parish. In like manner, it has been held that the words “parochial rates” in the 6 Geo. 4, c. 57 comprehend the land tax, and that they are not to be confined in construction to rates or taxes raised for the purposes of the parish, but that they import taxes raised within the parish (*v*). But payment of a *watch rate* for one of the wards of the city of London was held not to be within either of the statutes; as it is not a parochial tax, nor one collected by any officer belonging to the parish (*x*). So the payment of a rate in respect of a *county bridge* gives no settlement; because a person pays as an inhabitant of the county, and not of the parish (*y*).

Of the Rating, Payment, and Inhabitancy.—In order to gain this species of settlement, it is not necessary that the party should have been actually rated to the value of 10*l.*; it is enough, if the rating was in respect of a tenement of that annual value (*z*). Neither is it necessary that the relation of landlord and tenant should subsist for the acquisition of this settlement; and it is also equally immaterial, that the party paying the rate is afterwards reimbursed by his landlord, or any other person (*a*); or that another person paid the rate, out of charity, for the party rated (*b*). But where the party neither pays the rate himself, nor constructively by the hands of his agent, then, although he is rated, he does not gain a settlement; as, where an excise officer was rated to the land tax in respect of his salary, but the rate was always paid by the collector, and no deduction made from the salary (*c*). A party may gain a settlement, if he has been assessed to, and paid poor rate for part of the year only, notwithstanding the 6 Geo. 4, c. 57, s. 2, if his renting and occupation have been such as to satisfy the requisitions of that statute (*d*). It is essential, that the party should have inhabited the

(*u*) *R. v. Bramley*, Burr. S. C. 75.

(*v*) *R. v. East Teignmouth*, 1 B. & Ad. 244.

(*x*) *R. v. Christ Church, London*, 8 B. & C. 660.

(*y*) *Ibid.*, per Bayley, J.

(*z*) *R. v. St. Dunstan's*, 4 B. & C. 686.

(*a*) *R. v. Asmoueth*, 8 East, 383; *R. v. Lower Heyford*, 1 B. & Adol. 75.

(*b*) *R. v. Bridgewater*, 3 T. R. 550.

(*c*) *R. v. Weobley*, 2 East, 68.

(*d*) *Reg. v. St. Mary, Kalendar*, 9 Ad. & E. 626.

parish in which he was rated (*e*), and have resided therein forty days after such rating, as well as *after* the payment of the rates (*f*).

Although the rate be informal, or too narrowly made, yet if the party be rated and pay the rate, he acquires a settlement; for, although a public tax be laid too narrowly, it is not the less a public tax on that account. All that the statute requires is, that it shall be a *public tax*, and *charged* and *paid* within the parish (*g*). But the insertion of a party's name in the rate, *after* he has paid it, prevents him from gaining a settlement; otherwise, if it be inserted *before* he pays the rate (*h*). The omission of the sum assessed against the party's name in the rate is immaterial; if, from the rate itself, the amount of the assessment can be otherwise ascertained (*i*). The person paying, however, must be the person rated, and the payment must be by the party's own act, directly, or constructively; it is not sufficient that another person, without his authority, pays the rates for him (*k*). Where the mother of the pauper had occupied the house, and was rated and paid the rates till the time of her death, after which her son occupied the house, and paid the rates, but *her* name was continued in the rate; it was held, that the son gained no settlement (*l*). But, though the party must be both rated and pay, it is enough if there be a description in the rate sufficient to charge him; and it is not necessary that his name should be actually inserted in the rate (*m*); therefore, where a person was rated as "occupier" merely, without his name appearing in the rate, this was adjudged to be a sufficient designation of him (*n*); and the like, where he was merely rated thus, "Thomas Clifford, or *tenant*;" Thomas Clifford being the landlord, and the tenant paying the rates (*o*). If the rate, however, be made in any other way than by name, it must appear that the party was notoriously the tenant; therefore, where a house called "Wainllwyd" was rated by that name, and it appeared that the overseer knew nothing of the party, or whether he resided in the tenement which was the subject of the rate; this was held to be not a sufficient rating, so as to enable the party to gain a settlement (*p*). It may be inferred, nevertheless, from the form of rating, who is the person charged; and, in the case of the land tax, the presumption is,

(*e*) *R. v. St. Michael at Thorn*, 6 T. R. 536.

(*f*) *R. v. Ringstead*, 7 B. & C. 607.

(*g*) *R. v. St. Bees*, 9 East, 203.

(*h*) *R. v. Edgbaston*, 6 T. R. 540.

(*i*) *R. v. Corhampton*, Doug. 621.

(*k*) *Reg. v. Bridgenorth*, 10 Ad. & E.

66.

(*l*) *R. v. Heckmondwicke*, Doug. 564.

(*m*) *R. v. Walsall*, Cald. 35.

(*n*) *R. v. Brightman*, 8 Mod. 38; 2 Burr. 1062.

(*o*) *R. v. Painswick*, Burr. S. C. 465.

(*p*) *R. v. Llangammarch*, 2 T. R. 628.

that the occupier is the person rated; for, though the landlord is the debtor, the rate is pointed at the occupier (*q*). Where expressions fall short, so that it cannot be collected from the rate itself, who is the person actually charged, collateral circumstances may be resorted to, to point out the party meant to be charged (*r*); as, where the collector gave the receipt in the name of the landlord, in the form "so much assessed on the landlord," the presumption is, that the landlord was rated (*s*).

Evidence.]—The rate itself must be produced as evidence of being charged; parol evidence is not admissible of its contents, unless notice is given to produce it, or some reasonable account given for its non-production (*t*).

10. *Of Settlement by Acknowledgment.*

Where a parish acknowledges that a pauper is settled there, either by a *certificate* to that effect, by giving him *relief*, or by *omitting to appeal against an order of removal*, it is *strong evidence* of the place of his settlement. But he does not *gain* a settlement by such acknowledgment; and, although this is generally classed under a distinct head of settlement, it must be remembered that it is no more than *evidence* of the fact, and that the parish is not in all cases absolutely bound by the admission. The acknowledgment may be treated of in the following order:

1. *By Certificate.*
2. *By Relief.*
3. *By Non-appeal against an Order of Removal.*

1. *By Certificate.*

The practice of granting certificates has been approved of by Lord Tenterden, who justly observes, that "in many cases a labourer, who might wish to come into a parish, might not be able to obtain employment there, for fear that by so doing he might bring burthens upon the parish. But if he came with a certificate, that fear would be removed." Notwithstanding, however, it is highly proper and reasonable that parish officers should, under these circumstances, grant a certificate to a poor man who seeks for work in another parish, yet it seems that they cannot be compelled to do so; the

(*q*) *R. v. Mitcham*, Cald. 276; 4 Doug. 226.

(*r*) *Ibid.*

(*s*) *R. v. St. James, Bury*, 4 Doug. 200.

(*t*) *R. v. Coppull*, 2 East, 25.

Court of King's Bench having on one occasion refused a writ of *mandamus* for that purpose (*u*). And since the 35 Geo. 3, c. 101, s. 1, which declares that no poor person shall be removed, until he shall become actually chargeable to the parish in which he is dwelling, the practice of granting certificates has fallen into disuse, as there is no longer that necessity for them, which formerly existed.

Statutory Enactments.—By the 8 & 9 Will. 3, c. 30, s. 1, if any person, who shall come into any parish, or other place, there to inhabit and reside, shall, at the same time, procure, bring, and deliver to the churchwardens or overseers of such parish, or to any or either of them, a certificate under the hands and seals of the churchwardens and overseers of any other parish, township, or place, or the major part of them, or under the hands and seals of the overseers of any other place, where there are no churchwardens, to be attested respectively by two or more credible witnesses, thereby owning and acknowledging the person mentioned in the certificate to be an inhabitant legally settled in that parish, township, or place, every such certificate,—having been allowed of and subscribed by two justices of the peace of the county, city, liberty, borough, or town corporate, wherein the parish or place from whence any such certificate shall come doth lie,—shall oblige the said parish or place to receive and provide for the person mentioned in the certificate, together with his or her family, as inhabitants of that parish, wherever he, she, or they shall happen to become chargeable to, or be forced to ask relief of, the parish to which such certificate was given; and *then, and not before*, any such person, and his or her children, though born in that parish, not having otherwise acquired a legal settlement there, may be removed, conveyed and settled in the parish from whence such certificate was brought.

By the 9 & 10 Will. 3, c. 11, no person, who shall come into any parish by any such certificate, shall be adjudged by any act whatever to have procured a legal settlement therein, unless he shall really and *bonâ fide* take a lease of a tenement of the yearly value of 10*l.*, or shall execute some annual office in such parish, being legally placed in such office.

By 12 Ann. st. 1, c. 18, s. 2, if any person who shall be an apprentice bound by indenture to, or shall be a hired servant to, any person, who did come into, *or* (*x*) *shall reside* in any parish, township, or

(*u*) *R. v. St. Ives*, 2 Sess. Ca. 153.

(*x*) The word "*or*" is to be read

"and;" *R. v. Mortlake*, 6 East, 397; so that residence is material. See *post*.

place by means or licence of a certificate, and not afterwards having gained a legal settlement therein, such apprentice or servant shall not thereby gain any settlement therein.

By 3 Geo. 2, c. 29, s. 8, one of the witnesses, who attest the execution of the certificate by the churchwardens or overseers, must make oath before the justices of the peace who are required to allow the same, that he saw the churchwardens or overseers severally sign and seal the certificate; and that the names of the witnesses attesting the certificate are of their own proper handwriting; and the justices must also certify that such oath was made before them. Every such certificate so allowed, and oath of the execution thereof so certified by the justices of the peace, shall be taken as duly and fully proved, and be received as evidence, without other proof.

By 51 Geo. 3, c. 80, s. 1, all certificates executed by *two persons only*, acting as churchwarden as well as overseer, shall be considered valid.

By 54 Geo. 3, c. 107, all certificates by persons, who at the time of executing the same acted as churchwardens, shall be as valid as if they had been actually sworn into the office.

By *sect. 2*, all certificates executed by the overseers of any township, hamlet, chapelry, or place, and the churchwarden or churchwardens acting for or appointed in respect of the same, or the major part of them, shall be taken to be valid, as if the certificate had been executed by such overseers and the churchwardens *of the parish* wherein such township is situate.

By 1 & 2 Geo. 4, c. 32, all certificates, which have been previously executed by one churchwarden or chapelwarden, acting or purporting to act in that capacity for any parish or place for which two had formerly been appointed, are declared to be good and effectual.

How directed.—As the statute does not require any particular direction of the certificate, it will not be vitiated, if it is not addressed at all; but there must be a particular parish in contemplation at the time of granting it; for a certificate is not a transferable instrument from one parish to another, and after it has performed its office in one, it cannot be taken to another for the same purpose (*y*). A certificate directed “to the parish of the *Holy Trinity*, or any other *parish* in the city of Coventry,” will operate upon delivery to any other parish there (*z*). So, a certificate addressed “to the parish of

(*y*) *R. v. Lillington*, 1 East, 438; *R. v. Lubbenham*, 4 T. R. 251. (*z*) *R. v. Lillington*, 1 East, 438.

Harwich, near Dover Court," was held a good certificate for the parish of *St. Nicholas* in *Harwich* (*a*).

How signed and sealed.—As the 8 & 9 Will. 3, c. 30, s. 1 directs the certificate to be signed by the churchwardens and overseers, or the major part of them, it has been held that a certificate not signed by the major part of them is void (*b*). But we have seen, that, by 51 Geo. 3, c. 80, s. 1, where a certificate is executed by *two* persons only, acting as churchwarden as well as overseer, it will be valid. If a place has no churchwarden, the certificate must then be signed by the overseers; the signature of *one* only will render the certificate invalid; for the appointment of *one* overseer alone for a township is bad in law (*c*). But where a certificate was granted by A., the only churchwarden, and B., the only overseer of the parish, it was held that this must be taken to have been a good certificate; as it might be intended in favour of such an instrument, that by custom there was only one churchwarden (*d*) in the parish, and that two overseers had been originally appointed, but that one of them had died; and that the certificate was granted before the vacancy was filled up (*e*). The certificate must be under the distinct and separate seal of each churchwarden and overseer; therefore, where there were only *two* seals to *three* signatures, the certificate was held void (*f*). A certificate, however, which purported to be granted by *four* persons as churchwardens and overseers, and was only signed by *one* of the churchwardens and the *two* overseers, was held to be good; as being an execution by the major part of the churchwardens and overseers (*g*). And, after a great lapse of time, it will be presumed that every thing necessary to be done to make the certificate valid and binding was done; as, for instance, that a churchwarden, upon his being nominated, duly took the oath of office before the commissary (*h*). But, however old the certificate may be, an improbable fact ought not to be presumed, for the purpose of supporting it. Therefore, where a certificate was signed on the 18th April, 1748, by *two* churchwardens, and by *two* out of *five* overseers who had been appointed for the previous year, (the statute of 43 Eliz. c. 2,

(*a*) *R. v. St. Nicholas in Harwich*, 2 Str. 1163.

(*b*) *R. v. Margam*, 1 T. R. 775.

(*c*) *R. v. Clifton*, 2 East, 168.

(*d*) Although there may be a custom to have only *one* churchwarden, yet a custom to have *no* churchwarden is bad in law. *R. v. Wir*, 2 B. & Ad. 197.

(*e*) *R. v. Catesby*, 2 B. & C. 834.

(*f*) *R. v. Austrey*, 6 M. & S. 319.

(*g*) *R. v. Whitchurch*, 7 B. & C. 573.

(*h*) *Ibid.* But now, by the 54 Geo. 3, c. 107, where a party acted as churchwarden at the time of granting a certificate, his execution of it will be as good as if he had actually been sworn in.

s. 1, authorizing the appointment only of *four* overseers); and in May, 1748, it appeared that a church rate had been signed by *four* churchwardens, and that in the year 1746 no less than *five* overseers and *four* churchwardens had been appointed; the Court refused to presume against all these facts, in favour of the validity of the certificate, that when it was signed there were *not four* churchwardens sworn in, or that there was a new and valid appointment of overseers before the certificate was granted; so that it might be taken to have been signed by the majority of the churchwardens and overseers (*i*).

Of the allowance and Attestation.—The allowance of the certificate is entirely in the discretion of the justices of the peace; if it is not signed by two, it is void (*k*); if the certifying parish lie in two counties, the justices of either county may allow it (*l*). The justices, who allow the certificate, may also attest as witnesses; but in that case it must appear upon the certificate, that they took upon them to act in both (*m*) capacities. The attestation being directed by the statute to be made previous to the allowance,—where an order of removal recited that the pauper had come with a certificate *allowed* according to the act, it was presumed to have been duly attested; for, otherwise, it ought not to have been allowed (*n*). And where a certificate was attested by A. B. and P. J., and it was certified on the allowance, that P. J. made oath that he was present with A. B. and saw the certificate signed by the parish officers, and that his name was his own writing; it was held, that this was sufficient proof of A. B.'s attestation (*o*).

Of the Delivery.—The statute requires a *delivery* of the certificate to the parish officers at the time when the pauper goes into the certificated parish. Therefore, where an apprentice was bound to a man having a certificate, but the certificate was not delivered to the parish officers until after the apprenticeship had expired, it was held, that the apprentice gained a settlement (*p*). But the neglect to deliver the certificate does not render it wholly ineffectual; for the parish which gives it is at all events bound by it, as a conclusive acknowledgment that the pauper was settled there at the time it was given (*q*).

(*i*) *R. v. Upton Gray*, 10 B. & C. 807.

(*k*) *R. v. Wootton*, Burr. S. C. 581.

(*l*) *R. v. Austréy*, 6 M. & S. 319.

(*m*) *R. v. Boston*, 2 Bott, 561.

(*n*) *Barleycroft v. Coleoverton*, 1 Str. 402.

(*o*) *R. v. Ashton Keynes*, Burr. S. C. 725.

(*p*) *R. v. Wensley*, 5 T. R. 154; *R. v. Egremont*, 14 East, 253.

(*q*) *R. v. St. Nicholas, Harwich*, Burr. S. C. 171; *R. v. Buckingham*, Cald. 64.

To whom the Certificate extends.—The certificate extends to the unborn children of the certificated person; therefore, where a party, after coming into a parish with a certificate, marries there and has a son, the son cannot gain a settlement there by hiring and service (*r*). But where the party certified returned to the certifying parish, in which he continued to live for seventeen years, and there had a son, it was held that this son might gain a settlement in the certified parish (*s*). And a certificate does not extend to a son, who marries and becomes the head of a family himself, for he is then no longer to be considered as part of his father's family; nor, *à fortiori*, to a grandchild; for when the son becomes the head of a new branch, and has children of his own, his children then form a part of his own family (*t*). Therefore, where the son of a certificated person marries and lives separately from his father, his apprentice may gain a settlement in the certificated parish (*u*). But this reasoning does not apply to the bastard child of an unemancipated daughter (*x*). And where the son of a certificated person is *expressly named* in the certificate, then the son's children, until they are emancipated, are within the protection of the certificate, not as the grandchildren of the principal person named, but as the family and children of another person also named in the certificate (*y*). But the circumstance of naming a son in the certificate does not prevent his settlement from shifting with his father's settlement, as long as he remains unemancipated; therefore, if the father, after the granting of the certificate, gains a fresh settlement, this also becomes the settlement of the son as derived from his father (*z*). The parties themselves may narrow the extent of the certificate; therefore, where a certificate was granted to the father, mother, and the *two younger* children, but the pauper, a boy then of fourteen years of age was purposely excluded from it,—the parish officers declaring before the magistrate, that as the pauper was getting his own living, they had nothing to do with him; it was held, that the certificate did not extend to the son, and that he was therefore not disabled from gaining a settlement by hiring and service in the certified parish (*a*). Where a parish gave a certificate to a single woman, acknowledging her “and the child

(*r*) *R. v. Sherborne*, Burr. S. C. 182.

(*s*) *R. v. Frampton*, Doug. 418; Cald.

(*t*) *R. v. Darlington*, 4 T. R. 797.

(*u*) *R. v. Mortlake*, 6 East, 397; *R. v. Thwaites*, 1 M. & S. 669.

(*x*) *R. v. Idle*, 2 B. & Ald. 149.

(*y*) *R. v. Batheaston*, 8 T. R. 446; *R. v. Teserton*, 5 T. R. 258.

(*z*) *R. v. Leek Wootton*, 16 East, 118.

(*a*) *R. v. Storrington*, 7 T. R. 133.

she was gone with" to be settled in that parish, the parish is bound to receive the bastard (*b*). But a certificate stating the woman to be unmarried, and agreeing to receive her and all the children she might thereafter have, does not extend to a bastard born several years afterwards (*c*); for this is not like the last case, where the woman was actually with child at the time of the certificate being granted, and which proceeded on the principle, that a child *en ventre sa mere* is capable of being described. But illegitimate children, unborn and unbegotten at the time of the certificate, are not within the general words of description contained in it, which extend only to legitimate children.

Of the general effect of the Certificate.—A certificate provides for the security of that parish, only, into which the certificated person came to reside by virtue of such certificate, but does not exclude him from gaining a settlement in another parish in the same manner as any other person may do (*d*). And where an apprentice to a certificated man is assigned to one in another parish, the apprentice may gain a settlement in the other parish (*e*). A certificate has also the effect of protecting from removal paupers in a poor-house of the certifying parish, which is situated in the certificated parish (*f*). A certificate is conclusive evidence of the facts contained in it, as against the certifying parish, although they afterwards turn out untrue; as, where it acknowledges two individuals to be man and wife (*g*), or where it states a bastard to be a legitimate child (*h*). It is also conclusive between the parish certifying and the parish to which it is granted, although not delivered till after the removal (*i*). But a certificate is not conclusive, except between the two original parishes; when a question arises therefore between the certifying parish and a *third* parish, the certifying parish may then inquire into the truth of the facts stated in the certificate (*k*).

- *How determined.*—The certificate is determined by gaining a settlement in another parish. Therefore, a certificated person, after serving an apprenticeship in a third parish, becomes quite clear of the certificate, and is as much at liberty to gain thenceforth a new

(*b*) *R. v. Ipsley*, Burr. S. C. 650.

(*c*) *R. v. Mathon*, 7 T. R. 362.

(*d*) *R. v. Sherbourne*, Burr. S. C. 182;
R. v. Lilton, *id.* 269; *R. v. Horsley*, *id.*
 385.

(*e*) *R. v. Petham*, 2 Str. 1147.

(*f*) *R. v. St. Peter and St. Paul*, Cald.

213.

(*g*) *R. v. Headcorn*, Burr. S. C. 253;
 1 Str. 1233; *R. v. Ullenthorpe*, 8 T. R.

465.

(*h*) *R. v. Fostock*, Burr. S. C. 737.

(*i*) *R. v. Buckingham*, Cald. 64.

(*k*) *R. v. Lubbenham*, 4 T. R. 251.

settlement in the parish to which he was certified, as any uncertificated person could be (*l*). A settlement may also be gained in the certificated parish by the party residing there under the certificate, in three different ways; 1st, by taking a lease of a tenement of the annual value of 10*l.* (*m*); 2ndly, by the execution of a public annual office (*n*); and 3rdly, by a residence of forty days on an estate acquired by devise or descent (*o*); and the estate may be either one *pur autre vie* (*p*), or the wife's life estate (*q*), or an estate acquired by twenty years adverse possession (*r*); but not an estate purchased by the party (*s*).

A certificate may also be determined by the *abandonment* of it; as where the party absented himself for seventeen years, and died, without returning to the certificated parish (*t*). And, indeed, whenever a certificated person leaves the certificated parish, without any intention of returning, the certificate is at an end (*u*); but not when he goes elsewhere on a visit, or on occasional business, leaving his family behind him in the certificated parish (*x*). And where a certificated person went to the certifying parish, and was there hired to different persons for a year respectively, and served accordingly, and then returned to her brother who was still living under the certificate; it was held, that this was no abandonment of the certificate (*y*). And the same, where the son of a certificated person went into the certifying parish, and, after there hiring himself to and serving several persons, returned to his father in the certificated parish (*z*).

A certificate is likewise discharged by a subsequent order of removal of the pauper or his family to the certifying parish; any one of whom may therefore, after such removal, gain a settlement in the certified (*a*) parish. A second certificate, also, given by the certifying parish to another parish, discharges the former certificate (*b*).

Removal of Certificated persons.—If several persons reside in a parish under the same certificate, the asking relief by a single one of

(*l*) *R. v. Great Torrington*, Burr. S. C. 733.

(*m*) See 9 & 10 W. 3, c. 11, *ante*, p. 905.

(*n*) See *ibid*.

(*o*) See *ante*, p. 886.

(*p*) *R. v. Cassington*, 2 B. & Ad. 874.

(*q*) *R. v. Shenstone*, Burr. S. C. 468.

(*r*) *R. v. Cold Ashton*, Burr. S. C. 444.

(*s*) *R. v. Great Driffield*, 8 B. & C. 648.

(*t*) *R. v. Taunton*, Burr. S. C. 402; *R. v. Frampton*, Doug. 418; Cald. 97.

(*u*) *R. v. Newington*, 1 T. R. 354.

(*x*) *R. v. St. Michael's, Coventry*, 5 T. R. 526.

(*y*) *R. v. Keel*, Cald. 144.

(*z*) *R. v. Ingworth*, 8 T. R. 339.

(*a*) *R. v. Sudbury*, Burr. S. C. 373; *R. v. Bridham*, Cald. 500; 4 Doug. 245.

(*b*) *R. v. St. Peter, Derby*, 1 T. R. 218.

them does not render the rest removable (*c*); *à fortiori*, the chargeability of an emancipated son will not render the father removable (*d*). If it turn out that the pauper, before the granting of the certificate, had gained a settlement in another parish, subsequent to the one he acquired in the certifying parish, then the certificated parish may remove him to such other parish (*e*). But where a pauper is residing in the poorhouse of the certifying parish, which is situated in the certificated parish, the latter cannot remove him (*f*). Where a pauper is removed by the certificated parish, on account of his becoming chargeable, it is provided by the 3 Geo. 2, c. 29, s. 9, that the overseers of such parish are to be reimbursed their charges of maintaining and removing him.

Apprenticeship under Certificate.—We have already seen (*g*), that by the 12 Ann. st. 1, c. 10, s. 2, a person being *apprentice* to, or hired as a *servant* by, a certificated person, cannot gain a settlement in the certificated parish: and notwithstanding the certificate is discharged during the apprenticeship, by the master gaining a settlement in the certificated parish, and the apprentice serve him more than forty days after that time, yet the apprentice will gain no settlement; for, in order to gain a settlement by apprenticeship, the binding must be such as would at the time be effectual for that purpose (*h*). The service also must be effectual, as well as the binding; therefore, where an apprentice had only served twenty-two days before his master obtained a certificate, it was held that he could gain no settlement, although he continued to serve him three years afterwards (*i*). Upon the same principle, where the apprentice of a third person is transferred over to a certificate man, he can gain no settlement by serving him for the remainder of his apprenticeship (*k*). In like manner, an apprentice to a certificate man, serving an uncertificated person in the same parish, gains no settlement there (*l*); but it is otherwise, if the apprentice is assigned to a person in *another* parish (*m*). The son of a certificated person, being part of his family, cannot gain a settlement in the same parish, while under age; for

(*c*) *R. v. Framlingham*, Burr. S. C. 748.

(*d*) *R. v. St. Mary, Westford*, 3 T. R. 44.

(*e*) *R. v. St. Martin, at Ock*, 16 East, 303.

(*f*) *R. v. St. Peter and St. Paul, Cald.* 213.

(*g*) See *ante*, p. 905.

(*h*) *R. v. Leeds*, 4 B. & Ad. 248.

(*i*) *St. Cuthbert v. Westbury*, Burr. S. C. 470.

(*k*) *Romsey v. St. Michael's, Southampton*, Burr. S. C. 640.

(*l*) *R. v. Hinckley*, 4 T. R. 371.

(*m*) *R. v. Petham*, 2 Str. 1147.

two things are requisite to confer a settlement by apprenticeship, viz. *binding*, and *inhabitaney*, and both these must concur, in a certificated parish, after the party is of full age, so as to make an act *sui juris* (*n*). Where a party was bound apprentice to a man who had a certificate, but who did not *deliver* it to the parish officers until after the apprenticeship had expired, it was held that the apprentice gained a settlement; for a certificate is of no effect, until *delivered* to the parish officers (*o*). Although an apprentice to a certificate man may gain a settlement by sleeping more than forty days in another parish during the continuance of the apprenticeship, yet if he has resided occasionally in both parishes, and sleep the last night of his apprenticeship in the certificated parish, having resided there more than forty days in the whole, he will not gain a settlement in the other parish; for the other parish is not to be placed in a worse situation than if a certificate had not existed, in which case the settlement would have been clearly in the certificated parish (*p*).

Of Evidence as to the Certificate.]—By the 3 Geo. 2, c. 29, s. 8, as we have already seen (*q*), a certificate, after it has been allowed, and oath of its execution certified by the justices, is declared to be evidence, without further proof. And where a certificate more than thirty years old is produced, it is sufficient evidence, without giving any account of it (*r*); although it is produced by a rated inhabitant and overseer of the certified parish. But where no certificate could be found, it was held, that an old book produced from the parish chest, in which was an entry in the handwriting of a former parish officer, of the fact of the delivery to him of a certificate given by another parish officer, acknowledging the pauper to be their settled inhabitant, was inadmissible in evidence; as the entry had been made by a person having an interest to make it, in order to be relieved from the burden of maintaining the individual named in the certificate (*s*).

The Form of the Certificate and Allowance.

To the churchwardens and overseers of the poor of the parish of —.

We, the churchwardens and overseers of the poor of the parish of —, in the county of —, do hereby certify, own, and acknowledge, that A. B. is an inhabitant

(*n*) *R. v. Queenborough*, 2 B. & Ad. 219.

(*o*) *R. v. Wensley*, 5 T. R. 154.

(*p*) *R. v. Rustington*, 6 M. & S. 396.

(*q*) See *ante*, p. 906.

(*r*) *R. v. Ryton*, 5 T. R. 259.

(*s*) *R. v. Debenham*, 2 B. & Ald. 185.

legally settled in our parish of — aforesaid. In witness whereof we have hereunto set our hands and seals, the — day of —, in the year, &c.

Attested by

L. M.

N. O.

C. D. } Churchwardens. (L. s.)

E. F. } (L. s.)

G. H. } Overseers of the (L. s.)

I. K. } poor. (L. s.)

We, J. P., and T. P., esquires, two of her Majesty's justices of the peace in and for the said county of —, do allow of the above-written certificate. And we do also certify, that L. M., one of the witnesses who attested the same, hath this day made oath before us, that he, together with N. O., did see the churchwardens and overseers of the poor of the above-mentioned parish of —, whose names and seals are thereunto subscribed and set, severally sign and seal the same; and that the names J. M., and N. O., respectively subscribed to the said certificate as the witnesses attesting the execution of the same, are of the respective proper handwritings of the said L. M. and N. O. Given under our hands, this — day of —.

J. P.

T. P.

2. *Of acknowledgement by Relief.*

The fact of a parish giving relief to a pauper, while residing in another parish, is strong evidence against the relieving parish that the pauper is settled there; but it does not absolutely estop the parish from disputing the settlement (*t*); for, after all, it only shows the *opinion* of the parish, that the pauper was settled there. A single instance, therefore, of such relief, will not be *conclusive* evidence against the relieving parish (*u*). And the bare fact of a parish relieving a pauper while residing in it, is no evidence whatever of his being settled there (*x*); notwithstanding such relief is afforded more than once (*y*), and is continued for a long period, and one of the family is even put out apprentice by the parish (*z*); for if the parish officers, by giving relief to a pauper, were to be making evidence against themselves as to his settlement in their parish, it would make them perform their duty with great reluctance to casual poor. And it seems, that the giving relief will not bind a parish, if it was given under misrepresentation of the law (*a*).

3. *By Non-appeal against an Order of Removal.*

An order of removal, which is executed and *unappealed against*,

(*t*) *R. v. Wakefield*, 5 East, 355; *R. v. Barnsley*, 1 M. & S. 377.

(*u*) *R. v. Edwinstowe*, 8 B. & C. 671; *R. v. Yarwell*, 9 B. & C. 894.

(*x*) *R. v. Chadderton*, 2 East, 27.

(*y*) *R. v. Chatham*, 8 East, 498; *R. v. Trowbridge*, 7 B. & C. 252.

(*z*) *R. v. Colerton*, 1 B. & Ald. 25.

(*a*) *Reg. v. East Winch*, 12 Ad. & E. 697.

is conclusive against all the world (*b*); for it is an adjudication by a competent legal authority of the fact, that the pauper is settled in the place to which the removal is directed to be made; and although such an adjudication may be disputed on appeal, yet if the party, whose interest it is to contest its validity, voluntarily submits to it, the legitimate inference is, that it cannot be set aside or reversed. The production of such an order, therefore, is evidence of the pauper's settlement at the place to which he is removed, even between two other parishes (*c*); but it is only evidence of such settlement at the time when it is made, and can have no effect prospectively; for the pauper may, of course, acquire another settlement immediately after the making of the order, in which case the order will be no longer in force, and consequently no proof of any existing settlement.

VII. OF THE REMOVAL OF THE POOR.

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| <ol style="list-style-type: none"> 1. <i>Statutory Enactments.</i> 2. <i>Who may be removed.</i> 3. <i>Removal of Scotch and Irish Paupers, &c.</i> 4. <i>Of Persons returning after Removal.</i> 5. <i>Of the Order of Removal.</i> 6. <i>Appeal.</i> 7. <i>Effect of an Order unappealed against.</i> | <ol style="list-style-type: none"> 8. <i>Effect of quashing or confirming an Order.</i> 9. <i>Power of the Sessions as to Orders of Removal, and herein of granting a special Case, and awarding Costs.</i> <p><i>As to the Removal of Certificated Persons, see ante, "Settlement by Certificate."</i></p> |
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1. *Statutory Enactments.*

Who removable.]—By the 13 & 14 Car. 2, c. 12, s. 1, upon complaint made by the churchwardens or overseers of any parish to any justice of the peace, *within forty days after* any poor person coming to settle in such parish, in any tenement under the yearly value of 10*l.*, any two justices of the peace, whereof one to be of the *quorum*, of the division where any persons that are *likely to be chargeable* (*d*) to the parish shall come to inhabit, may, by their warrant, remove and convey such person to such parish where he was last legally settled, either as a native, householder, sojourner, apprentice, or servant, for the space of forty days at the least, unless he give sufficient security for the discharge of the parish, to be allowed by the justices.

(*b*) *Per Buller, J., R. v. Kenilworth*,
2 T. R. 598.

(*c*) *R. v. Corsham*, 11 East, 388.

(*d*) See 35 Geo. 3, c. 101, *post*, p. 917.

But by *sect. 3*, any person may go into any parish to work in time of harvest, or at any time to work at any other work, so that he carry with him a certificate from the minister of the parish, and one of the churchwardens, and one of the overseers, that he has a dwelling-house, or place in which he inhabits, and hath left wife and children, or some of them there (or otherwise, as the condition of the person shall require), and is declared an inhabitant there. And in such case, if the person shall not return to the place aforesaid, when his work is finished, or shall fall sick or impotent whilst he is in the said work, it shall not be accounted a settlement in the above-mentioned cases; but any two justices may convey him to the place of his habitation as aforesaid; and if he shall refuse to go, or shall not remain in the parish where he ought to be settled, but shall return of his own accord to the parish from whence he was removed, any justice of the place where the offence shall be committed, may send him to the house of correction, there to be punished as a vagabond, or to a public workhouse, there to be employed in work or labour; and if the churchwardens and overseers of the parish to which he shall be removed shall refuse to receive him, and to provide work for him, any justice of that division may bind any such officer to the assizes or sessions, there to be indicted for his contempt.

By the 1 Jac. 2, c. 17, s. 3, the forty days continuance in a parish intended by the above act, is to be reckoned from the delivery of notice in writing by the person coming to settle, of the house of his abode, and the number of his family, to one of the churchwardens or overseers of the parish to which he shall so remove.

Duty of Overseers.—By the 3 W. & M. c. 11, s. 3, the churchwarden or overseer was required to cause such notice to be read on the next Lord's day, immediately after divine service, in the church or chapel of the parish; and the forty days to make a settlement were to be accounted from such publication.

But by 35 Geo. 3, c. 101, s. 3, the above provisions as to notice are abrogated, as to their effect in giving any settlement to a pauper; for it is thereby declared, that no person coming into any parish shall be enabled to gain a settlement therein by delivery and publication of notice in writing.

By 3 W. & M. c. 11, s. 10, if any person be removed from one county, riding, city, town corporate, or liberty, to another, by warrant of two justices, the churchwardens or overseers of the parish or town to which such person shall be so removed are required to

receive him ; and if they neglect or refuse to do so, then, upon proof thereof by two witnesses upon oath before any justice of the place to which such person shall be so removed, he shall forfeit 5*l.* to the use of the poor of the parish from which he was removed, to be levied by distress ; and, for want of distress, to be committed to the common gaol for the space of forty days. An appeal is given to the next sessions for the county from which the party was removed.

Amending Order.—By 5 Geo. 2, c. 19, s. 1, the justices at sessions, upon the trial of any appeal against an order of removal, are empowered to rectify and amend any defect of form in such order.

Who not removable.—By the 35 Geo. 3, c. 101, s. 1, so much of the 13 & 14 Car. 2, c. 12, as enables the justices to remove any persons that are likely to be chargeable to a parish, is repealed ; and it is enacted, that no poor person shall be removed, by virtue of any order of removal, from the parish where he shall be inhabiting to the place of his last legal settlement, until he shall have become *actually chargeable* to the parish in which he shall then inhabit.

Suspension of Order.—By *sect. 2*, in case any poor person shall be brought before any justice, for the purpose of being removed by virtue of any order of removal, or of any vagrant pass, and it shall appear to the justice that he is unable to travel by reason of sickness or other infirmity, or that it would be dangerous for him so to do, the justice or justices making such order, or granting such pass, are required and authorized to suspend the execution of the same, until they are satisfied that it may safely be executed, without danger to any person who is the subject thereof ; which suspension of and subsequent permission to execute the same, shall be respectively indorsed on the order or pass, and signed by the justice or justices. No act done by a pauper continuing to reside in any parish, under the suspension of any such order, shall be effectual, either in the whole or in part, for the purpose of giving him a settlement in the same. The charges (*e*) proved upon oath to have been incurred by such suspension may by the justices be directed to be paid by the churchwardens and overseer of the parish to which the pauper is ordered to be removed, in case any removal shall take place, or in case of his death before the execution of the order ; and, upon default made in the payment of such charges within three days after demand, without giving notice of appeal, one justice may by warrant

(*e*) See 4 & 5 Will. 4, c. 76, s. 84, *1st*, p. 920.

under his hand and seal cause the money to be levied by distress on the goods of the person or persons refusing or neglecting payment of the same, and such costs, not exceeding 40s., as the justice shall direct. If the parish to which the order is made, before the death of the pauper, be without the jurisdiction of the justice issuing the warrant, then the warrant may be transmitted to any justice having jurisdiction there, who, upon receipt of it, is required to indorse it for execution. If the sum ordered to be paid exceed 20*l.*, the party aggrieved may appeal to the next sessions, in like manner as against an order of removal, and the sessions may amend the order; in which case they may direct it to be carried into execution by the justices by whom it was made, or in case of their death, by any other justice.

Convicted Felons, Rogues, &c.—By *sect. 5*, every person who shall have been convicted of larceny, or any other felony, or who by the laws then in being was deemed a *rogue, vagabond, idle or disorderly person (f)*, or who shall appear to any two justices of the division wherein such person shall reside, upon the oath of one witness, to be a person of evil fame, or a reputed thief, such person not being able to give a satisfactory account of himself, or of his way of living, shall be considered as a person *actually chargeable* to the parish in which he shall reside, and shall be liable to be removed to the place of his last legal settlement by the justices of the division where any such person shall reside.

Pregnant Women.—By *sect. 6*, unmarried women with child were declared to be actually chargeable, and liable to be removed; but this enactment is now repealed by the 4 & 5 Will. 4, c. 76, s. 69 (*g*).

Suspended Orders.—By 49 Geo. 3, c. 124, s. 1, whenever any order of removal or vagrant pass shall be suspended, any other justice or justices of the county, or other jurisdiction, within which such removal or pass shall be made, may direct that the same shall be executed, and the charges to be paid, and may carry into execution any amended orders, as fully and effectually as the justices who shall make any such order of removal, or grant such pass.

(*f*) By 5 Geo. 4, c. 83, all former provisions relating to *idle and disorderly persons, and rogues and vagabonds*, are repealed, and new provisions substituted. For the definition of the persons who are

now to be deemed such, see the 3d and 4th sections of the statute, *post*, title *Vagrants*; and as to their chargeability, see *sect. 29* of the same statute, *post*, p. 919.

(*g*) See *post*, p. 920.

By *sect. 2*, when an order of removal shall be suspended, the time of appealing against it shall be computed, according to the rules which govern other like cases, from the time of serving the order, and not from the time of making such removal.

By *sect. 3*, where any order of removal, or pass, shall be suspended, on account of the dangerous sickness or other infirmity of any person directed to be removed or passed, the execution of the order or pass shall be suspended for the same period, with respect to every other person named therein, who was actually of the same household or family of such sick or infirm person at the time of making the order or granting the pass.

Where Examination may be taken by one Justice.—By *sect. 4*, whenever any pauper is, by age, illness, or infirmity, unable to be brought up to the petty sessions to be examined as to his settlement, any one magistrate of the district may take his examination, and report the same to any other magistrate of the district, and the magistrates, upon such report, may adjudge the settlement, and make and suspend the order of removal, as fully and effectually as if the pauper had appeared before two magistrates.

Prisoners for Debt.—By 52 Geo. 3, c. 160, s. 3, if the overseers of a parish, to whom application for relief is made by a person confined under *mesne process* for debt, shall doubt about his settlement, they may cause him to be examined upon oath before a justice, upon which examination, two justices may make an order for his removal to the place of his last legal settlement, and suspend the execution of such order during the prisoner's confinement; which suspension shall be indorsed on the order, and signed by the justices, or by any other two justices acting for the county or division. By *sect. 4*, a copy of the order of removal must be served upon the overseers of the parish in which the prisoner shall be adjudged to be legally settled.—As to the provisions in the statute for repayment of the costs of maintenance, and the right of appeal, see *ante*, p. 726.

Rogues and Vagabonds, &c.—By 5 Geo. 4, c. 83, s. 20, every person, who, under the provisions of that act, shall have been convicted as an *idle or disorderly person*, or as a *rogue and vagabond (h)*, shall be deemed to be *actually chargeable* to the parish or place in which such person shall reside; and such person shall be

(h) For the definition of *idle and disorderly persons*, and *rogues and vagabonds*, see the 3d and 4th sections of the statute, *post*, title *Vagrants*.

liable to be removed to the parish of his last legal settlement by the order of two justices of the division in which he shall reside.

What persons declared to be chargeable.]—By 4 & 5 Will. 4, c. 76, s. 56, all relief given to or on account of the wife, or of any child under the age of sixteen, not being blind or deaf and dumb, shall be considered as given to the husband of such wife, or to the father of such child; and any relief given to any child under sixteen of any widow, shall be considered as given to such widow.

By *sect. 57*, every man, who shall marry a woman having a child, whether legitimate or illegitimate, shall be liable to maintain it as a part of his family, and shall be chargeable with all relief granted to or on account of such child, until it attains the age of sixteen, or until the death of its mother.

Notice of Chargeability.]—By 4 & 5 Will. 4, c. 76, s. 79, no poor person shall be removed or removable, under any order of removal from any parish or workhouse, by reason of his being chargeable to or relieved therein, until twenty-one days after a notice in writing of his being so chargeable or relieved, accompanied by a copy or counterpart of the order of removal of such person, and by a copy of the examination (i) upon which such order was made, shall have been sent, by post, or otherwise, by the overseers or guardians of the parish obtaining such order, or any three or more of such guardians, to the overseers of the parish to whom such order shall be directed. But if such overseers or guardians as last aforesaid, or any three or more of such guardians, shall, by writing under their hands, agree to submit to such order, and to receive such poor person, it shall be lawful to remove him according to the terms of such order, although the period of twenty-one days may not have elapsed; but if notice of appeal against such order shall be received by the overseers or guardians of the removing parish within the period of twenty-one days, it shall not be lawful to remove the pauper until after the time for presenting the appeal shall have expired.

And by *sect. 84*, the parish, to which any poor person, whose settlement may be in question at the time of granting relief, shall be admitted or finally adjudged to belong, shall be chargeable with the costs and expense of his relief and maintenance, which may be recovered against the parish, as any penalties under the act: but such parish, if not the parish granting such relief, shall pay to the parish

(i) See *post*, "*Evidence on an Appeal against the Order of Removal*," as to what is sufficient information of the grounds of removal.

by which such relief shall be granted, the cost and expense of such relief and maintenance, from such time only as notice of the chargeability shall have been sent by the relieving parish to the parish to which the pauper shall be so admitted or finally adjudged to belong. And no charges or expenses of relief or maintenance shall be recoverable under a suspended order of removal, unless notice of such order, with a copy of the same, and of the examination upon which such order was made, shall have been given, within ten days of such order being made, to the overseers of the parish to which such order is directed.

2. *Who may be removed.*

Only persons chargeable.—We have already seen, that by the 35 Geo. 3, c. 101, s. 1 (*k*) no person can be removed, until he shall become *actually chargeable* by himself, or his family, to the parish in which he is dwelling. It has been always considered, that relief given to a man's wife, or any unemancipated child, was to be deemed as relief given to himself, and consequently to render him chargeable. But we have seen, that it is now expressly provided by the 4 & 5 Will. 4, c. 76, s. 56 (*l*), that relief given to a wife, or child under sixteen, not being blind or deaf and dumb, is to be deemed relief given to the husband or father; and relief given to any child under sixteen of a widow, to be relief given to such widow; and by *sect. 57*, any relief given to a child under sixteen of a man's wife, whether legitimate or illegitimate, until the mother dies, is also declared to render her husband chargeable. By 5 Geo. 4, c. 83, s. 20 (*m*), every person convicted as an *idle and disorderly person*, or as a *rogue and vagabond*, is also declared to be *actually chargeable*. But by 4 & 5 Will. 4, c. 76, s. 79 (*n*), no person can be removed, until twenty-one days after a notice in writing of his being chargeable, accompanied by a copy of the order of removal, and of the examination on which the order was made, shall be sent to the overseers of the parish to which the removal is intended to be made,—nor, if notice of appeal is given within the twenty-one days after such notice, until after the time for presenting the appeal is expired.

No one from his own Estate.—A person cannot be removed from his own estate; for his right to reside on his estate is founded on *Magna Charta*, which says that a man shall not be disseised of his

(*k*) See *ante*, p. 917.

(*l*) See *ante*, p. 920.

(*m*) See *ante*, p. 919.

(*n*) See *ante*, p. 920.

parish (*y*). Although the order for the removal of a married woman does not state her to be such, it is not vitiated by such omission (*z*). Where the wife is deserted by her husband, who has no settlement, she may then be removed to the place of her maiden settlement (*a*); but not if her husband has a settlement in some other parish, although that parish cannot be exactly ascertained; as, where there was evidence that the husband was born in Ipswich, but no proof in what particular parish in Ipswich (*b*). Before the passing of the new poor law, it was determined, that, where the wife of a man (who was abroad) was pregnant of a child, which, when born, would be a bastard, she might be removed as an unmarried woman with child (*c*); but, as the 4 & 5 Will. 4, c. 76, s. 69 repeals the provisions of the 35 Geo. 3, c. 101, s. 6, which declared unmarried women with child to be chargeable, it follows that a married woman would not now under the above circumstances be removable. If the complaint in the order of removal state the premises from which the necessary conclusion arises that the woman is to be deemed chargeable, the complaint need not state that she had become actually chargeable (*d*).

Of Children.—Children under the age of seven years cannot be removed from their mother, but must remain with her for nurture until they attain that age; and there is no difference in this respect between legitimate and illegitimate children (*e*), who must in either case be removed with their mother. But the parish, where the settlement of the children is, is bound to maintain them in the mother's parish, and an order may be made by two justices for that purpose (*f*). And nurse children may be removed, without their father or mother, to their paternal or maternal settlement, where the parents desert their children, or keep out of the way (*g*). The children of the wife by a former husband, who are above the age of nurture, and under the age of sixteen, are not, under the 4 & 5 Will. 4, c. 76, s. 57 (*h*), removable with the mother to the place of her second husband's settlement, but to the place where the first husband was settled (*i*);

(*y*) *Reg. v. Stogumber*, 9 Ad. & E. 622.

(*z*) *R. v. Ysphyty*, 4 M. & S. 52.

(*a*) *St. John's, Wapping, v. St. Botolph, Bishopsgate*, Burr. S. C. 367; *R. v. Cottingham*, 7 B. & C. 615.

(*b*) *R. v. St. Mary, Beverley*, 1 B. & Ad. 201.

(*c*) *R. v. Tibbenham*, 9 East, 388.

(*d*) *R. v. Inskip with Sowerby*, 5 M. & S. 299.

(*e*) *Shermandbury v. Bolney*, Carth. 279.

(*f*) *Ibid.*; *R. v. Hemlington*, Doug. 9, n. 2.

(*g*) *Bucklebury v. Bradfield*, 1 T. R. 164.

(*h*) See *ante*, p. 920.

(*i*) *R. v. Walthamstow*, 6 Ad. & E. 301.

and when they become chargeable to the parish in which the second husband is settled, they may be removed from the mother to the place of the first husband's settlement (*h*). In like manner, under *sect. 7* of the same statute, when a woman having an illegitimate child marries, the child is removable, if above the age of nurture, and under sixteen, not to the place of the husband's settlement, but to that of the settlement of the mother; or, if born before the passing (*l*) of that statute, to the place of its birth (*m*).

Servants.—The justices have no power, upon the complaint of the parish officers, to remove a *servant* from his master; for that would be to dissolve the contract between master and servant, which can only be done upon complaint made by either of them according to law (*n*).

3. *Removal of Scotch and Irish Paupers, &c.*

By the 3 & 4 Will. 4, c. 40 (*o*), s. 1, so much of the former acts, as related to the removal of poor persons born in Scotland and Ireland, is repealed. And by *sect. 2*, two justices, upon the complaint of the churchwardens and overseers of any parish that any person born in *Scotland* or *Ireland*, or in the *Isle of Man* or *Scilly*, hath become chargeable to such parish, by himself or herself, or his or her family, may cause such person to be brought before them, and examine him and any other witnesses on oath touching the place of his birth or his last legal settlement, and inquire whether he or she, or any of his or her children, has or have gained a settlement in England; and if not, then upon proof of the place of birth and of the chargeability, the justices may, by an order of removal under their hands and seals, in the form (*p*) given in the schedule, cause such poor person, his wife, and such of his or her children so chargeable, as shall not have gained a settlement in England, to be removed by sea or land, in such manner as may have been directed by the quarter sessions of the county or city in which such parish may be situate, at the charge and expense of the complaining parish, to *Scotland*, or *Ireland*, or the *Isle of Man* or *Scilly*, to be afterwards repaid out of the county rate.

By *sects. 3* and *4*, the justices at sessions are to direct how the par-

(*h*) *Reg. v. Stafford*, 10 Ad. & E. 417.

(*l*) 14th August, 1834.

(*m*) *Reg. v. Wendron*, 7 Ad. & E. 819.

(*n*) *Farrington v. Witty*, 2 Salk. 527.

(*o*) This act is continued by 7 Will. 4

& 1 Vict. c. 16, and 3 & 4 Vict. c. 27, to the end of the session next after 1st August, 1843.

(*p*) See post, "*Forms of Orders of Removal.*"

ties shall be removed, and to make rules for carrying the act into execution.

By *sect. 5*, if the churchwardens and overseers shall bring or send to the clerk of the peace, or town clerk, of the county or city the order of removal, accompanied with an affidavit, sworn before some justice, of the amount of the expenses *bonâ fide* incurred and paid on account of such removal, and also a statement of the several items composed in such account, the clerk of the peace, or town clerk, is required to lay the same before the justices at the quarter sessions, who are to order the amount to be paid out of the county rate.

By *sect. 6*, all such charges and expenses, out of any parish rates within the city of London, shall be charged against the city, and, being audited by the city quarter sessions, shall thereupon be repaid by the chamberlain to the overseers or guardians of such parish; for which purpose a rate shall be made by the order of the justices in the several wards, in the same manner and with the same powers as the rates for the relief of the poor are made in such parishes, and under the powers for making and collecting poor rates.

And by *sect. 7*, in any city or borough which does not contribute to the county rate, the charges and expenses paid by the parishes within such city or borough shall be allowed by the city or borough quarter sessions, and paid by the order of the sessions to the churchwardens or overseers of any such parish; for which purpose a general rate shall be made by the sessions in such parishes, in the like manner and with the same power as the poor rates are made and collected.

Under the above provisions, therefore, if the wife and unemancipated children of a Scotchman or Irishman, who has not acquired any settlement in England, become chargeable, they must be removed along with the husband to Scotland or Ireland, and cannot be removed to the maiden settlement of the wife (*q*). And notwithstanding the daughter of an Irishman is born in England, and is above the age of eighteen, yet if she be living with her father as part of his family, and is unemancipated, she must be removed with him to Ireland (*r*); but her bastard child, if born in England, cannot be removed with her, although within the age of nurture; for the statute gives no power to remove a child which has acquired a settlement in England, which a bastard, before the 4 & 5 Will. 4, c. 76,

(*q*) *R. v. Leeds*, 4 B. & Ald. 498.

(*r*) *R. v. Mile End*, 5 Nev. & M. 581;
4 Ad. & E. 196.

s. 71, acquired in the place of its birth (*s*). Where, however, the wife of an Irishman is deserted by her husband, then she may, as in other cases of the like description, be removed to her maiden settlement (*t*). And where a pauper is born in England of Irish parents who have no settlement in England, he acquires a birth settlement there, to which he and his family may be removed, after his emancipation; the statute of 3 & 4 Will. 4, c. 40, not affecting such right of settlement (*u*). But the chargeability contemplated by the statute is the actual asking for parish relief, and not any constructive (*x*) chargeability.

Paupers born in Guernsey or Jersey.]—By the 11 Geo. 4, c. 5, the previous laws relating to the removal of persons born in Guernsey and Jersey are repealed; and by *sect.* 2, two justices, upon complaint of the churchwardens and overseers of any parish that any person born in Jersey or Guernsey hath become chargeable to such parish, by himself or herself, or his or her family, may cause such person to be brought before them, and examine him and any witnesses on oath touching his place of birth or last legal settlement, and inquire whether any of his children have gained a settlement in England; and if not, and he hath actually become chargeable to the complaining parish by himself or herself, or his or her family, then the justices may, by an order of removal under their hands and seals, cause such poor person, his wife, and such of his or her children so chargeable, as shall not have gained a settlement in England, to be removed at the charge of the complaining parish to the place of his or her birth.

Militia men.]—The 4 & 5 Will. 4, c. 76, s. 60 repeals so much of the 43 Geo. 3, c. 47, as prevents the wives and families of balloted

(*s*) *Ibid.*; *R. v. Bennett*, 2 B. & Ad. 712. One of the reasons given for the judgment of the Court in this last case, was, that there were no poor laws in Ireland, and that there was no parish which could be called upon to nurture the child, nor any one to enforce maintenance from the place of its birth; but, as there is now a poor law in Ireland, and as the Court admitted there was great hardship in removing the mother without the child, this point, if it should ever come again before the Court of Queen's Bench, might probably meet with a different decision,—more especially as the 4 & 5 Will. 4, c. 76, s. 71, declares that a bastard, until it attains the age of sixteen, shall

now follow the settlement of its mother; the equitable construction of which certainly seems to be, that the child, whilst under that age, is removable only to the place to which the mother is removable. It is true, that the above case of *R. v. Mile End* was decided since the passing of the 4 & 5 Will. 4; but the Court, in giving their judgment, expressly say, that the removability of the bastard with the mother to Ireland, was in that case not a circumstance necessary for their decision.

(*t*) *R. v. Cottingham*, 7 B. & C. 915.

(*u*) *Reg. v. Preston*, 12 Ad. & E. 822.

(*x*) *R. v. Whitehaven*, 5 B. & Ald. 720.

men, substitutes, hired men, or volunteers in the militia, from being removable to their places of legal settlement, or sent to any workhouse, by reason of their receiving any allowance, or being chargeable.

4. *Of Persons returning after Removal.*

By the 13 & 14 Car. 2, c. 3, if any person, after an order of removal, shall return of his own accord to the parish from whence he was removed, any justice might send him to the house of correction to be punished as a vagabond, or to a public workhouse to be employed in work or labour. But, since the 35 Geo. 3, c. 101, it seems that this authority of a magistrate so to deal with a returned pauper admits of considerable doubt; that is, until he becomes *actually chargeable* to the parish to which he returns. For, as the last mentioned statute renders a person irremovable, unless *actually chargeable*, he may, after his removal, return with the means of subsistence; and it would be therefore difficult to say, that by the mere act of returning he commits an offence (*y*).

But by the 5 Geo. 4, c. 83, s. 3, every person returning to, and becoming *chargeable* in, any parish, township, or place, from whence he or she shall have been legally removed by order of two justices of the peace, unless he or she shall produce a certificate of the churchwardens and overseers of some other parish or place, thereby acknowledging him or her to be settled in such other parish or place, is declared to be an idle and disorderly person; and any justice may commit him, on his own confession, or on the oath of one witness, to the house of correction to be kept to hard labour not exceeding one calendar month.

No person, however, can be convicted under either of the above statutes, any more indeed than under any other statute, without a complaint on oath, nor without his being heard in his defence (*z*); and the warrant of commitment of the offender must not be for an indefinite time, or “until he shall be delivered by due course of law,” but must be for a *precise limited time* within the period limited by the act of parliament (*a*); and the warrant must also specify distinctly *to what place* the party returned; for a commitment “for returning from the parish of St. Sepulchre’s, after a legal warrant of removal from the parish of the Holy Trinity,” has been held bad for uncertainty (*b*).

(*y*) *R. v. Barham*, 8 B. & C. 99, per Lord Tenterden. 124; 2 Bott, 884.

(*a*) *Baldwin v. Blackmore*, 1 Burr. 595.

(*z*) *R. v. Angell*, Cas. temp. Hardw.

(*b*) *R. v. Elere Cole*, 2 Bott, 886.

Whatever excuse the party may have for returning to the place from which he is removed, he must state it by way of defence before the magistrate; for, if he confesses himself guilty of the offence charged against him, he cannot afterwards bring an action against the magistrate for false imprisonment (*c*). If, therefore, his defence be, that he is not chargeable to the parish, but is able to maintain himself by his own labour, he should show it when brought before the magistrate. And a party is justified in returning, if he comes to reside on his own estate, or on a tenement of the yearly value of 10*l.*, for he cannot then be considered in a state of vagrancy (*d*).

5. *Of the Order of Removal.*

On whose complaint it must be made.]—The 13 & 14 Car. 2, c. 12, s. 1 (*e*), states that the order is to be made “upon complaint made by the *churchwardens or overseers* of the poor of any parish.” The complaint of the parish officers, therefore, is the very foundation of the jurisdiction of the justices, and, if it is not set forth in the order, the omission is fatal (*f*).

To what Justices.]—The complaint may be made to *one* of the two justices who finally make the order, and this one may issue his warrant to summon the pauper to be examined concerning his settlement; but the examination must be taken, as well as the order made, by *two* justices (*g*); except in the event of the illness or infirmity of the pauper, when, as we have seen by the 49 Geo. 3, c. 124, s. 4 (*h*), one justice may take the examination, and report the same to the other justice. The justices of one county cannot make an order, on an examination by the justices of another county (*i*). It must appear upon the face of the order, that the parties making it are *justices of the peace in and for* the county where it was made; an order stating only that they are “justices of the county,” or “justices of the peace in the county,” has been held to be bad (*k*); but it need not state that they are justices of the *division* (*l*). Neither of the removing justices ought to be one of the complaining parish officers (*m*). By 26 Geo. 2, c. 27, no order can be set aside for omitting

(*c*) *Mann v. Duvers*, 3 B. & Ald. 103.

(*d*) *R. v. Fillongley*, 2 T. R. 709.

(*e*) See *ante*, p. 915.

(*f*) *R. v. Hareby*, Andr. 361; 2 Bott, 811; *Western Rivers v. St. Peter's*, 2 Salk. 492; 3 Salk. 254.

(*g*) *R. v. Westwood*, 1 Str. 73; *Ware v. Stanstead*, 1 Salk. 488.

(*h*) See *ante*, p. 919.

(*i*) *R. v. Coln, St. Aldwyn's*, Burr. S. C. 136.

(*k*) *R. v. Uplin, Sett. & Rem.* 27; *R. v. Oulton*, 2 Salk. 474.

(*l*) *Anon.* 2 Salk. 473.

(*m*) *R. v. Great Yarmouth*, 6 B. & C. 646.

to state that one of the justices is of the *quorum*; and by 4 Geo. 4, c. 27, where the number of justices for any city or town corporate is limited, and any one, two, or more are of the *quorum* only, all orders or other instruments made or executed by any two justices acting within the same are declared to be valid, though neither of them be of the *quorum*.

Of the Examination.—Before the justices make an order of removal, they must take the examination upon oath of the pauper (*m*), or such other witness as can prove the settlement and chargeability; for this purpose, one of the justices may issue a summons to bring the pauper or witness before them. But though it is highly essential, if possible, that the pauper himself should be summoned and heard, before he is removed, yet it is not absolutely necessary,—as in the case of an infant of tender years, or the sickness or infirmity of the pauper (*n*). The examination should be carefully drawn up in writing; for, if the order is appealed against, the removing parish cannot give evidence of any ground of removal, except what is specifically stated in the examination; which is to be construed as strictly as the statement of the grounds of appeal (*o*). It must therefore show, on the face of it, every fact necessary to give the justices jurisdiction to remove the pauper (*p*),—as that the pauper was chargeable to the removing parish (*q*), and, from the facts stated, that he really gained a settlement by some particular mode pointed out in the parish to which the removal is made (*r*). And it is not enough, that it sets forth facts which show a settlement; but it must also disclose legal evidence of those facts (*s*); and no other evidence is admissible in support of the order, on appeal, if the appellant has stated the objection to the evidence contained in the examination, as the ground of appeal (*t*). It has been already stated (*u*), that the examination must be taken by the two justices who make the order; but, in the case of the illness of the pauper, it may be taken by one, under the provisions of the 49 Geo. 3, c. 124, s. 4; in which case the order need not state the special circumstances of taking the examination (*x*).

(*m*) *R. v. Wykes*, 2 Bott. 819.
 (*n*) *R. v. Bagworth*, Cald. 179; *R. v. Everdon*, 9 East, 101.
 (*o*) *R. v. West Riding of Yorkshire, Justices of*, 10 Ad. & E. 685.
 (*p*) *Reg. v. Althernun*, 10 Ad. & E. 699.
 (*q*) *Reg. v. Black Callerton*, 10 Ad. & E. 679.
 (*r*) *Reg. v. Middleton in Teesdale*, 10

Ad. & E. 688; *Reg. v. East Ville*, 1 Ad. & E. (N. S.) 828.
 (*s*) *Reg. v. Eccleshall Bierlow*, 11 Ad. & E. 607.
 (*t*) *R. v. Lydiard St. Lawrence*, 11 Ad. & E. 616; and see further, *post*, "Notice of Appeal."
 (*u*) *Suprà*.
 (*x*) *R. v. South Lynn*, 4 M. & S. 354.

It is advisable, though not necessary, that the officers of the parish, to which it is proposed to remove the pauper, should have previous notice to attend the examination, if they think proper to do so. The two justices should be together, when they take the examination, and sign the order; for, where either of these acts is done by them separately, the order is voidable on appeal, although not absolutely void (*y*). If a pauper refuse to be examined as to his settlement, the justices may commit him for the contempt, until he shall submit to be examined and answer according to law (*z*).

The examination of the pauper, however, is not evidence of the settlement, upon an appeal against the order of removal; notwithstanding the pauper absconds and cannot be heard of (*a*), or dies (*b*), since the making of the order.

With regard to the settlement of *soldiers* and their families, it is provided by the 5 Will. 4, c. 5, s. 70, (one of the Annual Mutiny Acts), that any justice, within whose jurisdiction any soldier in the regular army or the permanent staff of the militia (having a wife or child) shall be billeted, may summon such soldier before him, and take his examination in writing upon oath touching the place of his last legal settlement; and the justice shall give an attested copy of such examination to the person examined, to be by him delivered to his commanding officer, to be produced when required; which examination and attested copy shall be at any time admitted in evidence, as to such settlement, before any justice, or quarter sessions, although such soldier be dead or absent from the kingdom. If the soldier shall be again summoned as to his settlement, then, on such examination or attested copy being produced, he shall not be obliged to take any other oath as to his settlement, but shall leave a copy of such examination or of such attested copy, if required. No other copy, however, except the attested copy, can be received as evidence of the settlement (*c*). The examination does not prove itself, although it is in the form prescribed by the statute; but it must be authenticated, by proving that the parties who signed it were magistrates, and that the signatures are their handwriting (*d*). And the examination is not admissible in evidence, unless it appears, on the face of it, that the soldier was quartered within the jurisdiction of the justices (*e*).

By 59 Geo. 3, c. 12, s. 28, any justice may also take in writing

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| (<i>y</i>) <i>R. v. Stotfold</i> , 4 T. R. 596. | <i>v. Ferry Frystone</i> , 2 East, 54. |
| (<i>z</i>) <i>R. v. Jackson</i> , 1 T. R. 653, | (<i>c</i>) <i>R. v. Clayton le Moors</i> , 5 T. R. 704. |
| (<i>a</i>) <i>R. v. Nuncham Courtney</i> , 1 East, | (<i>d</i>) <i>R. v. Bilton</i> , 1 East, 13. |
| 373. | (<i>e</i>) <i>R. v. All Saints, Southampton</i> , 7 B. |
| (<i>b</i>) <i>R. v. Abergwilly</i> , 2 East, 63; <i>R.</i> | & C. 785. |

the examination on oath of any person having a wife or child, who shall be a *prisoner* in any gaol or house of correction, or in the custody of the keeper thereof, or in the custody of any constable or other peace officer, by virtue of any warrant or commitment, touching the place of his last legal settlement; which examination must be signed by the justice, and is then declared to be admissible in evidence as to such settlement before any justices, for the purpose of an order of removal, so long only as the party shall continue a prisoner.

The form of the Order.—It must appear distinctly in the order, in what county it is made; and it is not enough to name the county in the margin, without some words of reference to it in the body of the order, to show that the removing parish is in such county (*f*).

The order should be *directed* to the churchwardens and overseers of the removing parish, as well as to those of the parish to which the pauper is to be removed; and it should be stated, that it is made upon the *complaint* of the churchwardens and overseers of the removing parish; for the magistrates have no power to remove, on the complaint of any other person (*g*); and an order cannot remove more persons than those complained of (*h*). And the authority of the justices, as we have already seen (*i*), must be expressly shown; for it cannot be supplied by intendment.

The *name* of the pauper, if known, must be stated in the order; and if his *wife and children* are removed with him, they should be also separately *named* (*j*), and the respective *ages* of the children be set out, to show that they are so young as not to have gained a settlement of their own; or, if they are above seven years of age, there should be either an express adjudication of their having gained no other settlement (*k*), or of the place, to which the removal is made, being their last legal settlement (*l*); but it would seem, that this is not a defect apparent on the face of the order, and should be stated as a ground of appeal (*m*). The order must allege, that the pauper has *actually come into the parish* to inhabit; a mere statement that he *endeavours* to intrude is bad, for uncertainty (*n*). No more than one person, and those who derive their settlement from such person, as

(*f*) *R. v. St. Stephenson*, 1 Barnard. 177, 196.

(*g*) *Weston Rivers v. St. Peter's*, 2 Salk. 492.

(*h*) *R. v. Newington*, 2 Bott, 760.

(*i*) See *ante*, p. 928.

(*j*) *Flixton v. Royston*, 1 Sess. Ca. 11.

(*k*) *R. v. Bowling*, Burr. S. C. 177.

(*l*) *Ringmore v. Petworth*, 4 Chit. Burn, 41; *R. v. Trinity in Chester*, 2 Bott, 867.

(*m*) *R. v. Witherwick*, 6 Ad. & E. 273.

(*n*) *R. v. Graffham*, 2 Bott, 808.

wife or children, can be included in one order (*o*). But it is no ground for quashing an order, that it names a mother and son having a settlement independent of each other (*p*).

The *adjudication* must be *positive*, that the pauper is *actually chargeable* to the parish complaining (*q*), or that the complaint of the overseers of the parish is true; an adjudication that the justices "*believe* the same to be true (*r*)," or that the pauper "is likely to become chargeable," is bad (*s*). The adjudication also must be *positive*, that the place removed to is the last legal settlement of the pauper; it is not enough to say, that he was last settled there, "according to our knowledge (*t*)." But the words "having adjudged," and "have adjudged," have been held to be construed in the same sense as the words "do adjudge (*u*)."

Of the Execution of the Order.—To prevent the too hasty removal of a pauper after the order is made, we have already seen, that by the 4 & 5 Will. 4, c. 76, s. 79 (*x*), he cannot be removed, until twenty-one days after notice in writing of his being chargeable, accompanied by a copy of the order, and of the examination, is sent by post or otherwise, to the overseers of the parish to which the removal is to be made; nor, if notice of appeal is given within the twenty-one days, until the expiration of the time for prosecuting the appeal. The copy of the examination transmitted with a copy of the order must show, on the face of it, every fact necessary to give the justices jurisdiction to remove (*y*); therefore, if it do not show that the pauper was chargeable, it is a fatal objection on appeal (*z*); and the same, if it do not show from the facts stated, that the pauper really gained a settlement; as, where it merely stated, that he gained a settlement by renting and occupying a tenement of J. T. in the township of M., of the yearly rent of 10*l.*, no time being specified (*a*). Copies of all the examinations must be sent; for if any one is omitted, it is ground of appeal, although it may not contain the evidence upon which the order was in fact founded (*b*). Subject to the above re-

(*o*) *Chewton v. Compton Martin*, 1 v. *St. Nicholas, Leicester*, 4 Nev & M. 624. Str. 471.

(*p*) *Reg. v. All Saints, Newcastle*, 1 Ad. & E. N. S. 428. (*x*) See *ante*, p. 920.

(*q*) *R. v. Bourn*, Burr. S. C. 39. (*y*) *Reg. v. Alternun*, 10 Ad. & E. 699.

(*r*) *Stallinburgh v. Huxley*, 1 Sess. Ca. 131; 2 Bott, 848. (*z*) *Reg. v. Black Callerton*, 10 Ad. & E. 679.

(*s*) *Bury v. Arundel*, 2 Salk. 479. (*a*) *Reg. v. Middleton in Teesdale*, 10 A. & E. 688. And see further, *ante*, p. 929, and *post*, p. 940.

(*t*) *Reg. v. St. Mary, Ottery*, 2 Bott, 346. (*b*) *Reg. v. Outwell*, 9 Ad. & E. 836.

(*u*) *R. v. Maulden*, 8 B. & C. 78; R.

strictions, and to any lawful cause for suspending the execution of the order, it should be executed within a reasonable time after it is made. Three years have been held to be an unreasonable time (c); but one year not unreasonable, unless the circumstances of the pauper have in the meantime been altered (d). And where the order is not served within a reasonable time, it is not for this cause void, but voidable only by appeal (e). The mode of service, before the above enactment, was only by delivery of the order itself, or by serving a copy, and at the same time producing the original; but it would seem, from the words of the statute, that the merely *sending* a copy of it is now sufficient. The safest course appears to be for the removing parish to keep the original, and deposit it with their other muniments, for the purpose of producing it in evidence on any future occasion. By the 54 Geo. 3, c. 170, s. 10, the parish officers may employ any proper person to carry, remove, and deliver the pauper to the officers of the parish, to which the removal is ordered to be made.

Disobedience of the Order.—By the 3 W. & M. c. 11, s. 10, if the churchwardens or overseers of the parish, to which the removal is made, neglect or refuse to receive the pauper, then, upon proof thereof by two witnesses upon oath before any justice of the place to which the removal is made, they are liable to a forfeiture of 5*l.*, to go to the use of the poor of the removing parish, to be levied by distress; in default of which they may be committed to the county gaol for forty days; subject to the right of appeal to the next sessions for the county from which the party was removed. Besides this summary mode of proceeding, the parish officers are also punishable by indictment (f).

Of the Suspension of the Order.—In case the pauper ordered to be removed is unable to travel, by reason of sickness or other infirmity, then, as we have seen (g), the statute of 35 Geo. 3, c. 101, s. 2 authorizes any justice to suspend the execution of the order, until it may be safely executed; which suspension, as well as the subsequent permission to execute the same, must be indorsed on the order, and signed by the justice; and the charges incurred by such suspension may be directed to be paid by the parish to which such person is ordered to be removed, in case of the subsequent removal or death of

(c) *R. v. Lampeter*, 3 B. & C. 454.

(d) *R. v. Llanwinin*, 4 T. R. 473.

(e) *R. v. Penkridge*, 3 B. & Ad. 538.

(f) *R. v. Davis*, 1 Bott, 338.

(g) See *ante*, p. 917.

the pauper (*i*). When any such order is thus suspended, any other justice of the county may (by 49 Geo. 3, c. 124, s. 1 (*k*)), order the same to be executed; and during such suspension (by *sect.* 3) the execution of the order shall also be suspended, with respect to every other person named therein, who is actually of the same household or family of such sick or infirm person. It is not necessary, to render the order of suspension valid, that the pauper himself should be brought before the justices who make either the order of removal, or the order of suspension; it is enough, that his case is brought judicially before the magistrates for the purpose of his removal, to enable them to suspend the execution of the order (*l*). The suspension of the order operates, until the sick person can be safely removed; when it can only be taken off by an indorsement on the order by the justice; but if the sick person dies, then his wife and children may be removed under the original order, without taking off the suspension (*m*).

Where a pauper settled in O. met with an accident while resident in M., which made him chargeable to M.; and an order of removal was made to O., but was suspended till he recovered from the accident; it was held, that O. was liable to the expenses incurred by M. after the order, and that there was no distinction between infirmity produced by sickness, and that produced by accident, and still less ground for considering him as casual poor, when he was resident in M. (*n*).

The parish officers who obtain the order of removal must, by the 4 & 5 Will. 4, c. 76, s. 84, within ten days of its being made, give notice of the order, with a copy of the same, and of the examination upon which it was made, to the overseers of the parish to whom it is directed; otherwise, the latter will not be liable for any charges of relief or maintenance. Where a pauper during the suspension of the order becomes irremovable, in consequence of an

(*i*) It has been very justly observed by one of the learned editors of Chitty's Burn, (see vol. iv. p. 871, note (*b*)), that the above statute "improvidently, does not enable a magistrate to enforce reimbursement, from time to time, but only in the event of actual removal or death. The consequence may be, that in the event of a long illness and incapacity to be removed for many years, the burthen of reimbursement would fall at once heavily upon the inhabitants of the parish, instead of being equalized amongst the inhabitants from time to time during the whole term. It

has, in this respect, a twofold unjust operation; for the officers of the relieving parish may for years have to bear the expense, and their successors, who bore no part of the burthen, will receive in a lump the whole amount. In the parish of Whalley a pauper lived from 1808 till 1832, under a suspended order of removal, and the expense was 158*l.* 6*s.* 6*d.*"

(*k*) See *ante*, p. 918.

(*l*) *R. v. Everdon*, 9 East, 101.

(*m*) *R. v. Englefield*, 13 East, 317.

(*n*) *R. v. Oldland*, 4 Ad. & E. 929.

estate descending to him, no order can then be made upon the other parish for reimbursement of the expenses of his maintenance; such a case not being within the act, which only authorizes the reimbursement, in case of the removal or death of the pauper (*o*).

If the churchwardens and overseers of the parish to which the order of removal is made do not, within three days after demand, pay the charges of maintenance, and within the same time, give no notice of appeal against the order for the payment of such charges; then, by the 35 Geo. 3, c. 101, s. 2 (*p*), one justice may order the same to be levied by distress; and if the parish to which the order is made be without the jurisdiction of the justice issuing the warrant of distress, then the warrant may be transmitted to any justice having jurisdiction there, who, upon receipt of it, is required to indorse it for execution. It is peremptory upon the magistrate, under these circumstances, to indorse the warrant; for he has nothing to do with the propriety of making the original order, or granting the original warrant, and acts in this respect merely ministerially (*q*). But it is not,—because the parish officers are required, within three days after demand of payment of the charges, to give notice of appeal, for the purpose of preventing a warrant of distress,—that their right to appeal (which is afterwards given by the statute) against an order for payment of the charges of suspension is thereby taken away; for, if they afterwards think proper to appeal, within the time appointed by law for appeals against orders of removal, they are expressly empowered to do so (*r*). And, although the pauper dies before removal, and the costs of maintenance are under 20*l.*, the parish to which the order is directed have, nevertheless, a right of appeal against the order of removal, and the order for payment of the costs, as a contingent consequence to the order of removal (*s*). Where an order of removal is suspended, the time for appealing against it is, by 49 Geo. 3, c. 124, s. 1, directed to be computed from the time of serving the order, and not from the time of making the removal. But where the service of the order is defective—as by leaving a copy of the order, without producing the original—then the time for appealing may be computed after the removal (*t*).

Superseding an Order of Removal.—Where the justices have been surprised into the making an order of removal, which they

(*o*) *R. v. Chagford*, 2 B. & Ald. 235.

(*p*) See *ante*, p. 917.

(*q*) *R. v. Kynaston*, 1 East, 117.

(*r*) *R. v. Bradford*, 9 East, 97.

(*s*) *R. v. St. Mary-le-bone*, 13 East, 51.

(*t*) *R. v. Alnwick*, 5 B. & Ald, 184.

afterwards find there is no ground for, they may, of their own authority, and without the consent of the removing parish, supersede the order before execution (*u*); and they may still do so, notwithstanding the execution of the order, with the consent of the removing parish (*x*). But after the pauper has been removed, and an appeal lodged at sessions, this cannot be done, so as to prevent the appellant parish from insisting at the trial of the appeal, on an objection to an imperfect examination (*y*).

6. *Appeal against an Order of Removal.*

As to the appeal, when the Order is *suspended*, see *supra*, 935.

By whom, and to the Sessions of what County.—By 13 & 14 Car. 2, c. 12, s. 2, all persons who think themselves aggrieved by the order, may appeal to the next quarter sessions; which appeal, by 8 & 9 Will. 3, c. 30, s. 6, is to be determined at the sessions for the county wherein the removing parish lies. The pauper, therefore, being a party aggrieved, may appeal, as well as the parish (*z*); and a township or hamlet may appeal, although the order is directed to the parish in which the township is situated (*a*). So also, if there are no parish officers, and the parish would be consequently without remedy, in such case any inhabitant of the parish would have, as it seems, the same right of appeal (*b*). But where there are parish officers, then no individual parishioner can appeal (*c*). An appeal from an order of borough justices must be to the sessions for the county, and not to those for the borough (*d*). But, by charter, the magistrates of a borough may have jurisdiction to decide upon orders of removal; and in such case, although the borough sessions were held only twice a year, it was held, that an appeal might be to the next sessions for the borough (*e*). The recorder of a borough, which has a grant of separate quarter sessions under the 5 & 6 Will. 4, c. 76, has jurisdiction to try an appeal against an order of the borough justices to pay the expense of removing a pauper lunatic to an asylum, under the 9 Geo. 4, c. 40, s. 38 (*f*).

(*u*) *Pancras v. Rumbold*, 2 Bott, 631. Adol. 563.

(*x*) *R. v. Diddlebury*, 12 East, 359;
R. v. Norfolk Justices, 5 B. & Ald. 484.

(*y*) *R. v. Middlesex Justices*, 11 Ad. & E. 809.

(*z*) *R. v. Hartfield*, 2 Bott, 924.

(*a*) *R. v. Bishop Wearmouth*, 5 B. & Ad.
 942; *R. v. Carmarthenshire*, 4 B. &

(*b*) *R. v. Denbighshire*, 1 B. & Ald. 616.

(*c*) *Reg. v. Colbeck*, 12 Ad. & E. 161.

(*d*) *R. v. East Donyland*, Burr. S. C. 592.

(*e*) *R. v. Carmarthen*, 4 B. & Ald. 291.

(*f*) *Reg. v. St. Lawrence, Ludlow*, 11 Ad. & E. 170.

Within what time.—When the act says, that the parties aggrieved may appeal to the next sessions, this means the *next possible* sessions. Where it is impossible, therefore, for the parties to lodge their appeal at the next sessions, they may appeal to the next subsequent sessions (*g*). And the parish officers have a right to be allowed a reasonable time to make the necessary inquiries, that they may judge of the propriety of appealing, or not (*h*). Two days, including Sunday, is not a reasonable time (*i*).

Respite Appeal.—When the appellants cannot try the appeal at the next sessions, it is not necessary for them to enter and respite the appeal. Therefore, where the sessions required eight clear days' notice to try an appeal, and an order of removal was only served seven days before the sessions began, it was held, that the appellants were not obliged to enter and respite (*h*). Although an order of removal, after its execution, is superseded by consent of the removing parish and the justices who made it, the sessions have nevertheless a discretion to enter an appeal against it, or not, according as they may think justice requires it; in order to compel the respondents to pay the costs of maintenance, which were incurred by the appellants before the order was superseded (*l*). And, although due notice of appeal is given for the next sessions, the Court is not bound to enter and respite the appeal, except on such terms for the payment of costs by the appellants, as the rules of the sessions require (*m*).

Adjournment.—The sessions may adjourn the appeal for further consideration (*n*); and where the justices are equally divided in opinion on the hearing of it, this is the proper course (*o*). When the sessions are adjourned, the style of the sessions ought not to run, "at such a sessions held by adjournment;" but the time of the first meeting of the sessions ought to be set forth, and the entry to be, "that the same was continued by adjournment (*p*)."

Notice of Appeal.—By 9 Geo. 1, c. 7, s. 8, *reasonable notice* is required to be given by the churchwardens or overseers of the appealing parish unto those of the removing parish, the reasonableness of which notice is to be determined by the sessions; and in default

(*g*) *R. v. East Riding of Yorkshire*,
Doug. 192.

(*h*) *R. v. Essex Justices*, 1 B. & Ald.
210.

(*i*) *Ibid.*

(*k*) *R. v. Devon Justices*, 8 B. & C. 640.

(*l*) *R. v. Norfolk Justices*, 5 B. & Ald.
484.

(*m*) *R. v. Monmouthshire*, 1 B. & Ald.
895.

(*n*) *R. v. King's Langley*, 2 Salk. 605;
1 Ld. Raym. 481.

(*o*) *Bodmin v. Warligen*, 2 Bott. 982.

(*p*) *R. v. Hinderclieve*, 19 Vin. Ab.
356; 2 Bott. 956; *R. v. Heptonstall*,
Burr. S. C. 88; 2 Bott. 731.

of such notice, the sessions may adjourn the appeal to the next quarter sessions. Under this statute, the court of quarter sessions have a right to make rules to fix the time when notice of appeal shall be given. In some counties, as in Lancashire, fourteen days' notice is required; in others, eight days; in others, it is to be given on or before the Monday in the week next before the sessions. But, although the sessions have a discretion to exercise, with respect to what is reasonable time for giving notice of appeal, yet the Court of Queen's Bench has a visitatorial power over them in the exercise of such discretion, and will not give effect to any rule which the latter court may think unreasonable (*q*). And it is incumbent on the sessions to receive an appeal against an order of removal, notwithstanding no notice has been given; and they are bound to enter and adjourn it to the next sessions (*r*). Where the respite of an appeal takes place at the instance of the respondents, then no further notice of appeal is required (*s*). And where a regular notice of appeal had been given for one sessions, and the appeal was then adjourned at the instance of the appellants, after hearing counsel on both sides; and the appellants gave a second notice of appeal for the following sessions, which was too late by two days, according to the rules of the sessions; it was held, nevertheless, that this notice was sufficient (*t*).

By 4 & 5 Will. 4, c. 76, s. 81, the overseers or guardians of the parish appealing, or any three or more of such guardians, must, with such notice, or fourteen days *at least* before the first day of the sessions at which such appeal is intended to be tried, send or deliver to the overseers of the respondent parish a statement in writing under their hands of the grounds of such appeal; in default of which, the appellant parish cannot be heard in support of the appeal. And neither the respondent nor appellant parish can go into evidence of any other grounds of removal, or of appeal against the order, than those set forth in the order of removal, the examination on which the order was made, or such statement of the grounds of appeal.—In the construction of this section, it has been held, that a statement of grounds of appeal is not duly served, unless fourteen days elapse between the day of service and the first day of the sessions at which the appeal is to be tried; for that whenever an act is required by statute to be done so many days *at least* before a given event, the

(*q*) *R. v. Wiltshire Justices*, 10 East, 404; *R. v. Lancashire Justices*, 7 B. & C. 691.
 (*r*) *R. v. Bucks Justices*, 3 East, 343;
R. v. Staffordshire Justices, 7 East, 549.
 (*s*) *R. v. Lindsey*, 6 M. & S. 379.
 (*t*) *R. v. Gloucestershire Justices*, 3 Dowl. 298.

time must be reckoned, excluding both the day of the act and that of the event (*u*). But, as the practice in regard to delivering mere *notices of appeal* is not expressly altered by the act, it remains the same as before; although it requires the *statement of the grounds* of appeal to be delivered with such notice, at least fourteen days before the session. And although the 79th sect. (*x*) declares, that no pauper shall be removed under any order, until twenty-one days after a notice in writing of his being chargeable is sent to the parish to which such order is directed; and that, if notice of appeal against such order is received by the overseers or guardians of the removing parish within twenty-one days, the pauper shall not be removed until the time for prosecuting the appeal is expired,—still, this enactment does not require the notice of appeal to be given within the twenty-one days; the intention of the statute being only to prevent a *removal* within the twenty-one days (*y*). The notice of appeal therefore need not be given, until the parish is aggrieved by the actual removal of the pauper; and, where an order of removal was served June 8th, and the pauper was removed June 29th, which was a day after the Midsummer sessions began, it was held, that notice of appeal might be given for the October sessions (*z*).

Statement of grounds of Appeal.—The statement of the grounds of appeal, required by section 81, may be delivered before the notice of appeal; and, although it be delivered with an erroneous notice, it is, nevertheless, available, if a good notice of appeal, incorporating such statement by reference, be afterwards served in proper time (*a*). But where the appellants served a statement of grounds of objection, which only impugned the alleged settlement; and on the hearing of the appeal, the justices, being equally divided, adjourned the case to the next sessions; before which, the appellant served another statement, containing an objection to the notice of chargeability; it was held, that the objection could not be entertained, as it was not mentioned in the original statement of grounds of appeal (*b*). Where, however, an appeal is merely entered and adjourned, the appellants may, fourteen days before the sessions to which the adjournment is made, serve another statement, varying from the first, and treat such new statement as the only one; for, in this case, the

(*u*) *Reg. v. Shropshire Justices*, 8 Ad. & E. 173.

(*x*) See *ante*, p. 920.

(*y*) *R. v. Suffolk*, 4 Ad. & E. 319; 5 Nev. & M. 503.

(*z*) *R. v. Cornwall Justices*, 6 Ad. & E. 894.

(*a*) *R. v. Suffolk*, 4 Ad. & E. 319.

(*b*) *Reg. v. Arlecdon*, 11 Ad. & E. 87.

first statement had never been before the sessions (*c*). Where the notice of appeal purported to be signed by four churchwardens and four overseers, and the notice of the grounds of appeal was signed only by two churchwardens and two overseers; it was held, that the appellants were not bound by the description first given of the parish officers, but might give evidence to show, that the latter notice was signed by the proper officers (*d*). The statement should be sent or delivered to the overseers themselves, and not to their attorney. If a sufficient notice of appeal be served, but a defective statement of grounds of appeal, the sessions are not bound to adjourn the appeal; the compulsory clause in 9 Geo. 1, c. 7, s. 8 (*e*), not extending to the statement of the grounds of appeal (*f*). If no notice of chargeability has been sent with the order of removal, the parish to which the removal is made may take advantage of such omission, as a ground of appeal against the order (*g*). So, if all the examinations touching the settlement of the pauper, which were taken by the justices upon making the order of removal, are not sent with a copy of the order, it is a good ground of appeal; although one of the examinations may not contain the evidence, upon which the order was in fact founded (*h*). The requisition of the statute, as to stating the grounds of appeal, extends to objections, even apparent upon the face of the order of removal (*i*); therefore, no such objection can be taken by the appellants, unless it is relied upon in the notice of the grounds of appeal (*j*). If the copy of the examination transmitted with the order do not show that the pauper was chargeable (*k*), or, from the facts stated, that the pauper really gained a settlement in the appellant parish; the appellants may take advantage of such defect, though their notice of grounds of appeal state only, that the order of removal, examination, and notice of chargeability, are bad upon the faces thereof (*l*). And, although an examination sets forth facts which show a settlement, yet if it does not disclose any legal evidence of such facts, it is a good ground of appeal against the order. As, where an order of removal was made upon the examinations of the pauper and his father, in which the father stated, that the place of his father's settlement was E., as he had heard his father say, and

(*c*) *Reg. v. Derbyshire Justices*, 6 Ad. & E. 612, note.

(*d*) *Reg. v. Church Knowle*, 7 Ad. & E. 471.

(*e*) See *ante*, 937.

(*f*) *R. v. Kimbolton*, 6 Ad. & E. 603.

(*g*) *Reg. v. Brixham*, 8 Ad. & E. 275.

(*h*) *Reg. v. Outwell*, 9 Ad. & E. 836.

(*i*) *R. v. Withernwick*, 6 Ad. & E. 273.

(*j*) *Reg. v. Stafford*, 10 Ad. & E. 417.

(*k*) *Reg. v. Black Callerton*, 10 Ad. & E. 679.

(*l*) *Reg. v. Middleton in Teesdale*, 10 Ad. & E. 688.

believed to be true, and that he had also heard his father say that he had received relief from the overseers of E.—and the pauper himself stated, that his father's place of settlement was at E., as he had heard him say, and believed to be true; it was held that such order was bad, on a notice of appeal stating as one of the grounds, that the order was "bad and inoperative," and the examinations on which it was made, "defective and insufficient to ground and support the same (*m*)."

It would seem, however, from the language of the Court in another case where the same point was decided, that the order of removal will not be bad, because *some* improper evidence has been admitted, but only where the whole of the evidence is inadmissible (*n*).

But the sessions must reject evidence of any grounds of removal, which do not appear on the face of the examination to have been *proved* before the removing justices by some legal evidence; provided the defect of evidence be pointed out by the notice of objections. Thus, where a birth settlement of a pauper's husband was proved, only, by the husband stating that he was born in the appellant parish, "as I have heard and believe;" and the objection was, that it was not proved or set forth "upon oath of any credible witness," when or where the husband was born; it was held, that this evidence of the birth was merely hearsay, that the objection was sufficiently taken, and that *all* evidence of the birth was inadmissible; although it appeared in the examination, that the husband, when examined, was "confined in W. gaol for felony;" and the respondents contended, that the objection pointed only to the inadmissibility of a convicted felon (*o*).

So, where an examination stated an apprenticeship, and a service in the appellant parish with a party other than the master, but did not state the master's consent; it was held, that the examination was bad on the face of it, so far as regarded a settlement by apprenticeship; although the examination stated, that it was agreed in the indenture that the party should serve the last forty days of his apprenticeship in L., the appellant parish, "and I served the last forty days in L., with A. H., my master's father." It was held, also, that the objection was sufficiently taken, by stating that it did not appear that the examinant served A. H., with the consent of the master, or in any other manner, under any indenture of apprenticeship, alleging some additional defects, and then pro-

(*m*) *Reg. v. Ecclesall Bierlow*, 11 Ad. note.
& E. 607.

(*o*) *Reg. v. Lydiard, St. Lawrence*, 11 Ad. & E. 616.

(*n*) *Reg. v. Tetbury*, 11 Ad. & E. 615,

ceeding thus,—“and the said examinations are too general and are wanting in sufficient particularity, in each of these last-mentioned respects (p). It would seem, also, that although the settlement relied on is a derivative one from the pauper's father, whose alleged settlement is by apprenticeship, the examination should nevertheless give the date of the apprenticeship (q).

In one case it was held, that a notice of appeal, stating, as the grounds of appeal, that the pauper was not settled in the parish appealing, but that he was settled in the removing parish, without stating what the nature of the settlement was, was a sufficient notice of the grounds of appeal (r). But in a case which occurred not long afterwards, where the ground stated was, that the pauper “gained a subsequent settlement in C. by hiring and service for a year and upwards,” without saying with whom, or when; the Court of Queen's Bench held the statement to be insufficient, and that it must not be in general terms, but must condescend to particulars, not indeed to the extent of setting out the evidence by which facts are to be proved, but so as to give the opposite party reasonable means of inquiry (s). And it is now a general rule, that the date of the service, as well as the master's name, should be stated in the notice; though, if it appear that the appellants could not ascertain these facts, it would seem that the strict rule may in such case be dispensed with; and that the sessions may judge, whether, under the circumstances of any particular case,

(p) *Reg. v. Lydiard, St. Lawrence*, 11 Ad. & E. 616.

(q) *Ibid.* The 81st section of the 4 & 5 Will. 4, c. 76, which has already been so productive of litigation, says, merely, that the respondent parish, on the hearing of the appeal, shall not “go into or give evidence of any other grounds of removal” than those set forth in the examination. Is it not, therefore, a somewhat extended construction of this enactment, to hold, that the respondent parish shall not give other evidence of the same grounds of removal? The act does not say, that the respondent parish shall not call any other witnesses on the trial of the appeal, than those examined before the removing justices,—or that he shall be confined to the same evidence as was adduced before them; but, simply, that he shall not give evidence of any other grounds of removal; the reasonable interpretation of which would really seem to be, that he shall not give evidence of any other species of settlement than that

set forth in the examination, and not that he shall be precluded from establishing the same settlement by other evidence on the trial of the appeal. “The clauses in this act respecting the grounds of removal and appeal,” as was well observed by Mr. Justice Littledale, in pronouncing the judgment of the Court, in *Rex v. The Justices of Derbyshire*, 6 Ad. & E. 893, “are intended to compel such a disclosure by both parties, as will enable them to go to the sessions fully aware of the questions which are to be discussed;” the statements, therefore, “must not be in general terms, but must condescend to particulars, not to the extent of setting out the evidence by which facts are to be proved, but so as to give the opposite party reasonable means of inquiry.”

(r) *R. v. Cornwall Justices*, 5 Ad. & E. 134.

(s) *R. v. Derbyshire Justices*, 6 Ad. & E. 885.

the statement of time is so material, that the omission to specify it vitiates an examination or notice of appeal (*r*).

Where a notice of appeal alleged, as the ground, a settlement in another parish, T., stating, that the pauper, “in or about the year 1830, paid parochial taxes for a tenement in the parish of T., rented by him at 15*l.* a year, for the term of one year, and occupied by him under such hiring for one year, the rent to the amount of 10*l.* being paid by him; and that the pauper rented *the aforesaid tenement* (not describing it further) at 15*l.* a year, and occupied under that hiring for one year, and paid 10*l.* rent,”—the notice was held bad, for not describing the situation of the premises, or giving the landlord’s name; one or the other of which should have been stated in the notice (*s*). So, where the appellant parish stated, as the ground of appeal against a removal founded on a settlement by parish apprenticeship, “that the requisites of the statute of 56 Geo. 3, c. 139, and more particularly *sect. 5*, were not complied with;” it was held, that the appellants could not, under this statement, dispute the settlement, on the ground that the overseers had no notice, and were not present at the binding, pursuant to the requisitions of the 1st. and 2nd. *sects.* of that statute; and that the appellants ought to have stated more particularly the objections on which they intended to rely, namely, “that no notice of the binding was given to the overseers of the appellant township, and that none of them attended the justices, or admitted the notice (*t*).”

Where the examination stated a settlement under an indenture of apprenticeship; and the notice of appeal was, on the ground, “that the pauper did not acquire a settlement in the appellant parish by reason of his being bound an apprentice by indenture, dated, &c., to one, &c., and by serving, &c., because the premium of 15*l.* was paid by the parish officers, and not by the pauper’s father, and that the requisitions of the statute of 56 Geo. 3, c. 139, made for the regulation and binding of parish apprentices, were not complied with;” it was held, that this notice admitted the execution of the indenture, and that the appellants were bound to begin by establishing their objection; for when particular facts are stated and disputed in the notice, all other facts alleged in the examination are admitted (*u*).

Where the notice stated as the ground of appeal, that the pauper,

(*r*) *Reg. v. Bridgewater*, 10 Ad. & E. 693.

(*s*) *Reg. v. Sussex Justices*, 10 Ad. & E. 682.

(*t*) *Reg. v. Whitley, Upper*, 11 Ad. & E. 90.

(*u*) *Reg. v. St. John, Margate*, 1 Ad. & E. 252, N. S.

at his hiring, stipulated to have two days' holidays at Spalding Club feast in July, and that he had such holidays during his year of service; and on the hearing of the appeal, the pauper proved, that he bargained for one day's holiday to go to Holbeach fair, and had it during the year, but that he did not bargain for, or have any holiday at Spalding Club feast; it was held, that this evidence was not receivable to contradict the notice; for if anything is untruly stated in the notice, by which the respondents may have been misled, the statute is not complied with (*x*).

The notice should state, as one of the grounds of appeal, that the pauper had no settlement in the appellant parish; otherwise, the respondents will not be bound at the trial of the appeal to prove a settlement in the appellant parish (*y*).

Evidence.]—The pauper is a competent witness, as to the fact of his having gained a settlement in the appellant parish (*z*). And by 54 Geo. 3, c. 170, s. 9, rated inhabitants of any parish, or those maintained or supported thereby, or executing or holding any office therein, are declared to be competent witnesses for or against the parish in any matter relating to any order of removal, or the settlement of any pauper. But still it seems, that a rated inhabitant must be considered a party to the appeal, and that he is therefore not *compellable* to give evidence *against* his parish (*a*). And an overseer is not competent, by 54 Geo. 3, c. 170, s. 9, or otherwise, to give evidence for his parish on the trial of an appeal, whether the evidence be tendered on the merits, or on a preliminary point, as the service of notice (*b*).

By the 4 & 5 Will. 4, c. 76, s. 81, neither the respondent, nor appellant, parish can go into evidence of any other grounds of removal, or of appeal against the order, than those set forth in the order, the examination on which the order was made, or the statement of the grounds of appeal. Under this section the following cases have been decided. Where the parish officers of K., intending to remove a pauper to C., sent to the officers of the latter parish a notice of chargeability, the order of removal, and the pauper's examination, pursuant to the requisitions of the 4 & 5 Will. 4, c. 76, s. 79 (*c*), which examination stated that the pauper was born at K., where his father then resided, but that the father then, and until his death, be-

(*x*) *R. v. Holbeach*, 5 Ad. & E. 685.

(*y*) *Reg. v. Hockworthy*, 7 Ad. & E. 492.

(*z*) *R. v. Yarwell*, 9 B. & C. 895.

(*a*) *R. v. Woburn*, 10 East, 395, 402;

R. v. Upper Boddington, 8 D. & R. 726.

(*b*) *Reg. v. Bath, Recorder of*, 9 Ad. & E. 714.

(*c*) See *ante*, p. 920.

longed to C., as the pauper had heard and believed, and that the pauper had heard him say that he was a certificated man from C.; upon which C. gave notice of appeal, on the ground that the father never was settled in, or certificated from, C.; and, on the hearing of the appeal, the respondents offered evidence that the pauper's father was settled in C. by apprenticeship; it was held, that it was not necessary that more specific information should have been given of the grounds of removal, to render the above evidence admissible (*d*).

But the respondents cannot give in evidence other facts, which the appellants have had no opportunity of inquiring into, and have no reason to believe true, and which if they had been before apprised of, they might either have forborne appealing, or might have prepared themselves to dispute. Therefore, where the examination of a pauper stated that he had been hired by D. P. in 1829 to serve him for a year, and that when he had been there a fortnight, his master proposed that he should go and live with Mrs. P. instead of him, and that the pauper accordingly went to Mrs. P., and served the remainder of his year with her, without any fresh agreement; it was held, that the respondents could not give in evidence that D. P., in hiring the pauper, acted as the agent of his father, and that the service with Mrs. P. was a service under that hiring (*e*). So, where the examination of a pauper stated facts tending to show general admissions of a settlement by the appellant parish; and the notice of objection denied the fact of any such settlement, and the fact of the admissions; it was held, that the respondents could not give evidence of a settlement, by hiring and service in the appellant parish (*f*).

Where the pauper's examination differs from his evidence at sessions, as to any circumstance making a part of the matter pointed to in the statement of the grounds of appeal, it is for the sessions to decide whether the variance be material, within the 4 & 5 Will. 4, c. 76, s. 81 (*g*). Where, however, the examination stated a settlement by occupying a tenement "from June 1827 to June 1828;" and the evidence on the appeal was, that the occupation was "from June 1828 to August 1829," the variance was held to be fatal; and that the respondents could not cure it by a subsequent removal of the pauper, with another examination stating the dates correctly (*h*).

(*d*) *R. v. Kelvedon*, 5 Ad. & E. 687.

(*e*) *R. v. Misterton*, 6 Ad. & E. 878.

(*f*) *Reg. v. East Ville*, 1 Ad. & E. N. S. 828.

(*g*) *Reg. v. W. R. of Yorkshire Jus-*

tices, 10 Ad. & E. 685.

(*h*) *Reg. v. Clint*, 11 Ad. & E. 624, (note). But see *post*, p. 948, as to the effect of quashing an order.

If the copy of the examination, transmitted with an order of removal, show on the face of it every fact necessary to give the justices jurisdiction to remove, and disclose no irregularity, it cannot be objected, on appeal, that the evidence, before the justices was in fact inadmissible, if the objection was not made known to the justices at the examination. Therefore, where an order of removal had been made upon an examination, regular upon the face of it, of T. B., which was transmitted according to the provisions of the statute; and on appeal, the appellants offered to prove that T. B., when examined, was a convicted felon; it was held, that such evidence was irrelevant, if offered as impeaching the examination (*h*).

On the trial of an appeal against an order of removal in 1837, the appellants, to prove an order of the sessions for the same county in 1824 discharging a former order of removal, produced the original sessions book, which was in paper, containing the orders and other proceedings of the Court (among which was the order of sessions now in question), made up and recorded after each sessions by the clerk of the peace from minutes taken by him in Court, which book he considered and stated to be the record itself, no other record being kept; the minutes of each sessions were headed with an entry, containing the style and date of the sessions, and the names of the justices in the usual form of a caption, and the minute in question stated the subject of the appeal then brought, and the order made on hearing; and the book was signed, at the end of the proceedings of the sessions, "By the Court, J. C. clerk of the peace;" under these circumstances it was held, that the entry in the book was proper evidence of the order of sessions (*i*).

7. *Effect of an Order unappealed against.*

If the parish to which the removal is made do not appeal, the order is final, until a subsequent settlement is gained by the pauper; and they cannot, by another order, remove him to a third parish, until they set aside the first order on appeal (*h*). If the removal, however, be made to a place that does not separately maintain its own poor, the order is then a mere nullity, and there is no reason for an appeal (*l*). So, where it appears on the face of the order, that

(*h*) *Reg. v. Altermun*, 10 Ad. & E. 699.

(*i*) *Reg. v. Yeeveley*, 8 Ad. & E. 806.

(*k*) *Chalbury v. Chipping Farringdon*,

2 Salk. 488; *R. v. Leverington*, Burr. S. C. 276.

(*l*) *R. v. Swalccliffe*, Cald. 248.

the justices have no jurisdiction to make it, it is then a nullity, and will not bind the parish, although not appealed against (*m*). And where a person has an inchoate right of settlement in the parish removing him,—as being then entitled to letters of administration of an estate in that parish, which he afterwards perfects by obtaining a grant of administration,—the proper course is in such case, not to appeal, but to remove him back by a new order (*n*). But, notwithstanding an order unappealed against is in general conclusive, yet it may be abandoned by the parish in whose favour it is made; which may then obtain another order to remove the pauper to a different parish (*o*). And where an order of removal was made to a parish consisting of several townships maintaining their poor jointly, and afterwards one of the townships separated itself from the parish, and from thenceforth maintained its own poor, and the pauper having become chargeable to another parish, was removed to the township above mentioned, as a distinct township; it was held, that the former order upon the first mentioned parish was not conclusive against the township (*p*).

An order unappealed against, we have already seen (*q*), is conclusive against all the world of the settlement of the pauper at the time the order was made, even on a question of settlement raised between two other parishes (*r*). And it is not only conclusive of the settlement of the pauper being in the parish to which the removal is made, but it is also conclusive, as against that parish, of the facts contained in it. Thus, if two persons be removed as man and wife, with their children, it is conclusive upon the parish removed to, as to the fact of the marriage,—even though it is afterwards discovered that the man had a former wife living, and consequently that the children mentioned in the order were bastards (*s*). So also, where a pauper was removed as “wife of J. S.,” it was held conclusive, as to the question of marriage (*t*). And where a woman was removed merely as “E. Smith, widow,” it was held not only conclusive of her settlement, but also of that of her former husband (*u*), notwithstanding the order omitted to state that she was the wife or widow of one particular person; for the description of her in the order imported that she was removed to a place where her husband had

(*m*) *R. v. Chilverscote*, 8 T. R. 178.

(*n*) *R. v. Widworthy*, Andr. 4.

(*o*) *R. v. Diddlebury*, 12 East, 359.

(*p*) *R. v. Oldbury*, 4 Ad. & E. 167.

(*q*) See *ante*, p. 914.

(*r*) *R. v. Corsham*, 11 East, 388; *R. v.*

Kenilworth, 2 T. R. 598.

(*s*) *R. v. Woodchater*, 2 Str. 1172; *R.*

v. St. Mary, Lambeth, 6 T. R. 615.

(*t*) *R. v. Binegar*, 7 East, 377.

(*u*) *R. v. Rugeley*, 8 T. R. 620.

gained a settlement, and therefore it behoved the parish to which the removal was made to inquire how that settlement was gained (*x*). And the order is conclusive, as to the derivative settlement of a child of the pauper, although not mentioned in the order (*y*), provided such child had gained no settlement in his own right at the time of the order (*z*).

8. *Effect of confirming or quashing an Order.*

An order *confirmed* on appeal, also, binds all the world; for it is made in a suit instituted and determined by a court having proper jurisdiction between all proper parties, and establishes one certain fact, which, when ascertained, regards all the world, and is not to be considered in the light of *res inter alios acta*. But where an order removing D. and E. as man and wife, with their six children (naming them) to Wye, was appealed against; and, pending the appeal, the parish officers of Wye instituted a suit in the ecclesiastical court to dissolve the marriage as incestuous, and a decree was obtained declaring the marriage void *ab initio*, but the order had been previously confirmed; and the pauper was born of the supposed marriage before the order, but he was not named in it, and was unemancipated, and had gained no settlement when the order was made; it was held, that the confirmation of the order, under these circumstances, was not conclusive proof of a derivative settlement of the pauper in Wye, on an appeal against an order removing him there after the decree of the spiritual court; but that, on such appeal, Wye might show by the decree, that since the first order the marriage had become void *ab initio*, and the pauper illegitimate (*a*).

An order *quashed* is *only* binding between the parties, and does not conclude a *third* parish from showing that the pauper was settled in the appellant parish at the time of the making of the order; for it is only a kind of negative finding that such a settlement is not the last legal settlement; and a third parish may be able to get at evidence, which the respondent parish could not produce (*b*). And if an order is quashed for a mere defect in form, then it does not conclude the parties (*c*), provided the sessions state that the order was quashed for a mere defect of form (*d*). The respondents therefore may, on the trial of another appeal against another order of removal of the same

(*x*) *R. v. Rugeley*, 8 T. R. 620.

(*y*) *R. v. Catterall*, 6 M. & S. 83.

(*z*) *R. v. Southwam*, 1 T. R. 353.

(*a*) *Reg. v. Wye*, 7 Ad. & E. 761.

(*b*) *R. v. Bentley*, Burr. S. C. 425;

R. v. Cirencester, Burr. S. C. 17.

(*c*) *R. v. St. Andrew, Holborn*, 6 T. R. 613.

(*d*) *Reg. v. Church Knowle*, 7 Ad. & E. 471.

party, explain by evidence to the sessions the particular ground on which the former order was quashed (*e*). As, when the first order was for the removal of a certificate man, and was quashed merely because he was removed *before* he became chargeable, and the second order was made *after* he became so; in this case, the first order being premature, the only consequence is, that the pauper must be suffered to remain in the certificated parish until he becomes actually chargeable, and not to make a premature removal final for ever (*f*). Upon the same principle, where the first order was quashed by consent of the respondent parish, because they found that the pauper was then irremovable, on the ground of having purchased a tenement for less than 30*l.*; but, upon his afterwards selling it, they obtained a second order for his removal to the appellant parish; it was held, that the respondent parish might, on the trial of an appeal from the second order, show that the first order was quashed on account of the pauper being at that time irremovable, but that he was so no longer; for the only question decided on the first appeal was, that the appellant parish was not *then* bound to receive the pauper (*g*). But in all cases where the respondents apply to have an order quashed for defect of form, with the intention of obtaining afterwards a regular order, under the same circumstances, they should acquaint the appellants precisely with the ground on which they withdraw the former order, or the sessions should state that the order is quashed for mere defect of form (*h*).

If the order however is quashed *upon the merits*, the respondents are in that case concluded. Therefore, where a pauper was removed from B. to C., on an examination stating a settlement, by occupying a tenement "from June 1827 to June 1828;" and on appeal, the occupation appeared to be "from June 1828 to August 1829," whereupon the sessions quashed the order; and the same pauper was afterwards removed by a second order on a fresh examination stating the right dates; it was held, that the second order was invalid, and that the quashing of the first order was conclusive between B. and C. (*i*). So, where the mother of a pauper was removed in 1824 to S., by an

(*e*) *R. v. Wheelock*, 5 B. & C. 511.

(*f*) *Osguthorpe v. Diseworth*, 2 Str. 1256.

(*g*) *R. v. Wick St. Lawrence*, 5 B. & Ad. 526.

(*h*) *Reg. v. Church Knowle*, 7 Ad. & E. 471.

(*i*) *Reg. v. Clint*, 11 Ad. & E. 624. It is difficult to say, that the first order in

this case was quashed *upon the merits*. The reasons assigned by Lord Denman for his judgment are, that the new act made the case essentially different from *R. v. Wick St. Lawrence*; that the removing parish must be cautious in sending notice of the settlement which is to be relied on; and that the appellants have a right to bind the respondents to that settlement.

order describing her as the widow of the pauper's father, but the order was quashed, on appeal; and the pauper was not named in the order, he being then twenty-six years of age, but it did not appear that he had gained any settlement of his own; and by a subsequent order he was removed to S.; it was held, on appeal against this last order, that the discharge of the order in 1824 was material evidence for S.; and that, in the absence of proof to the contrary, it must be presumed to have been discharged on the merits as to the settlement, and that it could not be presumed, in the absence of proof, that the pauper was at that time emancipated (*k*).

When the order is quashed upon the merits, and the pauper will not, or cannot return to the place from which he was improperly removed, the appellant parish cannot lawfully be rid of him, but by another order of removal setting forth the matter specially; for this is but an execution of the order of sessions, which could not otherwise be carried into effect; as the sessions have no jurisdiction to make an order of removal (*l*).

9. *Power of the Sessions on hearing Appeals from Orders of Removal.*

Amending Order.]—By 5 Geo. 2, c. 19, s. 1, on all appeals to the sessions against the judgments or orders of any justices, the sessions may cause *defects of form* therein to be rectified, without costs. In the construction of this statute, it has been held that the power of amendment must be confined strictly to mere defects of form, and not to those which are considered defects in substance,—such as the omission to state any complaint, or adjudication of chargeability in the order (*m*), or the jurisdiction of the justices who made it (*n*); but the sessions may alter the word “parish” to “vill,” or the word “township” (*o*) to “parish.”

Judgment.]—In adjudicating upon orders of removal, the justices who made the order, and also those who are rateable in either of the contending parishes, or whose interests may be affected by the judgment, have no right to vote upon the determination of the appeal (*p*). And, if the order of sessions is brought up on *certiorari*, it will be quashed, on affidavit of the above facts. But, if a party to the ap-

(*k*) *Reg. v. Yeoveley*, 8 Ad. & E. 806.

(*l*) *Honiton v. South Beverton*, Comb. 401; 2 Bott, 909.

(*m*) *R. v. Great Bedwin*, 2 Str. 1158.

(*n*) *R. v. Chilverscoton*, 8 T. R. 178.

(*o*) *R. v. Amluch*, 4 B. & C. 757; *R. v. Bingley*, 4 B. & Ad. 567.

(*p*) *R. v. Yarpole*, 4 T. R. 71; *R. v. Gudridge*, 5 B. & C. 459.

peal, knowing of the interest of one of the justices, expressly or impliedly assent to the interested magistrate acting, such party cannot afterwards make the objection (*q*). The sessions cannot make an original order of removal (*r*); neither can they, when they quash such an order, direct the pauper to be sent back to the removing parish; they have power merely to affirm or quash the order, and not to make a new one (*s*). With respect to their own orders, they may alter any order made the same sessions, but not an order of the previous sessions (*t*).

As to granting a Special Case.—In deciding upon the facts adduced in evidence on the trial of an appeal, if the sessions entertain any doubt upon the law, it is in their discretion to grant a special case to the party against whom they decide, in order to have their judgment reviewed by the Court of Queen's Bench. When they have no doubt in their own minds, it is proper to decline granting a case, in order to save the parties from further litigation (*u*); but a refusal to do this, when the matter is doubtful, has been severely animadverted upon by Lord Hardwicke on more than one occasion (*x*). And where, after hearing an appeal, the sessions consented to grant a case, which having been agreed upon by the counsel on both sides, they tendered it in the afternoon to the justices remaining in court, two of whom happened to be those who had made the original order, and the other had an estate in each parish; and these justices refused to permit the case to be stated; the Court of King's Bench granted a *mandamus* to compel the justices to state the case (*y*). But, where it is clear that such a proceeding would lead to no result,—as, where the chairman, in consequence of his own opinion and that of the other justices upon the facts, refused to sign any statement but one, which would have excluded the point of law relied upon by the party demanding a case,—in such a case the Court refused to grant a *mandamus* (*z*). And where a special case has been granted by the sessions, the Court of Queen's Bench will not grant a *mandamus* to them to hear an appeal, which they have disposed of on a formal objection without going into the merits; for a party cannot have both remedies at

(*q*) *Reg. v. Cheltenham Commissioners*, 1 Ad. & E. N. S. 467; *R. v. Richton*, id. 479, note.

(*r*) *R. v. Bond*, 2 Show. 503; 2 Bott, 922.

(*s*) *R. v. Milverton*, 2 Bott, 928.

(*t*) *St. Andrew, Holborn, v. St. Clement Dunes*, 2 Salk. 494.

(*u*) *R. v. Darley Abbey*, 14 East, 285.

(*x*) *R. v. Oulton*, Burr. S. C. 64; *R. v. Preston*, id. 77.

(*y*) *R. v. Earl of Effingham*, 2 B. & Ad. 393, note (*a*).

(*z*) *R. v. Pembrokeshire Justices*, 2 B. & Ad. 391.

once (*a*). In every special case, the justices should find the facts, and not merely state the evidence from which the facts are to be drawn (*b*); and the points, on which the opinion of the Court above is required, should be distinctly stated. Where a case is insufficiently stated, or depends upon a question of fact which the sessions ought to have decided, the Court of Queen's Bench will send it back to be reheard (*c*); and the like, where a case has been granted upon the admissibility of evidence, which has been improperly rejected by the sessions (*d*); or when the sessions have drawn a wrong inference of law from the facts stated in the case,—as, that the pauper had not come to settle in the respondent parish, and was therefore irremovable (*e*). Wherever a case is thus sent back, the whole matter must be gone into again at the sessions (*f*); and the sessions may receive further evidence, and make a new order on such rehearing (*g*).

Where a special case stated, that, the justices being equally divided in opinion, the chairman (who had previously voted) gave a casting vote in favour of the order, which was confirmed accordingly; that on the following day the appellant's counsel protested against the legality of the decision, when "the question" was argued on both sides, and that the justices then present "determined to adhere to" the former decision; it was held, that, although the proceeding on the first day was irregular, yet that the Court above would not assume that the decision on the second day was not a judgment on the merits (*h*).

Where the sessions grant a case, it should be drawn up and agreed upon by the counsel for the appellant and respondent, and then signed by the chairman; and it is usual for the counsel also, as well as the clerk of the peace, to subscribe their names to it. The unsuccessful party then sues out a writ of *certiorari*, which is obtained upon the signature of counsel, and must be applied for within six calendar months after the making of the order of sessions. Notice of the application must be given to the justices, pursuant to 13 Geo. 2, c. 18, s. 5, notwithstanding the order of sessions was made subject to the opinion of the Court of Queen's Bench on a case to be stated; and the case is afterwards stated and settled by the justices at ses-

(*a*) *R. v. Justices of Suffolk*, 6 Ad. & E. 109; *R. v. Justices of Northamptonshire*, id. 111, note.

(*b*) *R. v. Lyth*, 5 T. R. 327.

(*c*) *R. v. Road*, 1 B. & Ald. 362.

(*d*) *R. v. Wrungle*, 2 Ad. & E. 13.

(*e*) *R. v. Woolpit*, 4 Ad. & E. 205.

(*f*) *R. v. Bromley*, 6 T. R. 330.

(*g*) *R. v. Bloxam*, 1 Ad. & E. 386.

(*h*) *Reg. v. Fladbury*, 10 Ad. & E. 706.

sions (*i*), and the case is afterwards set down for argument in the crown paper of the Court of Queen's Bench. The *certiorari*, by which the original order was removed, does not operate to remove the subsequent one upon the rehearing; and the party wishing to contest such latter order must obtain a fresh *certiorari*, for the purpose of removing it. After the expiration of six calendar months from the making of the order, a *certiorari* cannot be applied for, whatever may have been the cause of delay (*h*).

A *certiorari*, however, may be applied for to reverse an order of sessions, without any special case, upon a notice to the justices signed by the attorney for the parish, stating the intention of the parish to apply for such writ, which is a sufficient notice within the 13 Geo. 2, c. 18, s. 5. But the recognizances, under the 5 Geo. 2, c. 19, s. 2, for presenting such appeal, must be entered into by one or more of the inhabitants on behalf of themselves and the other parishioners, and also by sureties (*l*). In making a return to a writ of *certiorari*, it is irregular for the sessions to return more than the order of sessions; if they return other documents which led to the making of the order, the return will be quashed (*m*). The first question which the Court of Queen's Bench will consider, upon an application to remove an order of sessions by *certiorari*, is, whether the sessions had jurisdiction to make the order in question; and if, upon examining the affidavits in support of the application, the Court is of opinion that the sessions had jurisdiction, the Court will not grant the *certiorari*. Thus, where on an appeal against an order of removal, the respondents having objected to the statement of the grounds of appeal, the sessions held the statement bad; but, upon the respondents applying to have the order confirmed, a magistrate on the bench stated that the order was misdirected, in being addressed to the township of C., which was not a township; upon which the sessions, without any proof as to the correctness of this assertion, quashed the order for this alleged defect; the Court of Queen's Bench decided, that, as they could not notice objections not appearing on the face of the order of sessions, they could not grant the *certiorari*; although one of the judges said that "there could be no doubt that the sessions were wrong, and that they had acted very inconsistently and very absurdly (*n*)."

(i) *R. v. Sussex Justices*, 1 M. & S. 631.

(k) *R. v. Bloxam*, 1 Ad. & E. 386.

(l) *R. v. Abergele*, 5 Ad. & E. 795.

(m) *Id.*; 8 Ad. & E. 394.

(n) *Reg. v. Cheshire Justices*, 8 Ad. & E. 398.

Awarding Costs.—By 8 & 9 Will. 3, c. 30, s. 3, upon any appeal before the justices at sessions concerning the settlement of any pauper, or upon any proof before them made of notice of any such appeal having been given by the proper officer to the churchwardens or overseers of any parish or place (though they did not afterwards prosecute such appeal), the justices shall, at the same quarter sessions, award and order to the party in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges in the law, as by the justices in their discretion shall be thought most reasonable and just, to be paid by the churchwardens or overseers, or any other person, against whom such appeal shall be determined, or by the person giving such notice. If the person ordered to pay such costs live in another county, any justice of that county is required, upon request to him made for that purpose, and a true copy of the order for the payment of such costs produced, and proved by some credible witness upon oath, by warrant under his hand and seal, to cause the money mentioned in that order to be levied by distress and sale of the goods of the person ordered to pay the same; and, in default of any distress, to commit such person to the common gaol for twenty days.

By the 4 & 5 Will. 4, c. 76, s. 82, also, the sessions may order the parish, against whom the appeal shall be decided, to pay just and reasonable costs, and the Court is to certify for the amount. In case of default of payment by the overseers, upon demand, and upon the production of such certificate, the amount may be recovered from the overseers in the same manner as any penalties under the act; namely, (by *sect. 28*,) on conviction before two justices, by distress, in default of which the party may be committed for not more than three calendar months.

By *sect. 83*, if either party shall include in the order of removal, or statement of the grounds of appeal, any grounds of removal or appeal, which shall in the opinion of the justices determining the appeal be frivolous and vexatious, such party is liable to pay the whole or any part of the costs incurred by the other party in disputing any such grounds; which costs may be recovered in the same manner as the other costs of the appeal.

And by *sect. 84*, the parish, to which the pauper shall belong, shall pay the costs of his relief and maintenance from the time of receiving notice of his chargeability.

By 9 Geo. 1, c. 7, s. 9, if the sessions determine in favour of the appellant, that the pauper was unduly removed, they shall award to

the appellant so much money as shall appear to the justices to have been reasonably paid by the appellant parish for the relief of the pauper, between the time of the removal and the determination of the appeal; which is recoverable in the same manner as the costs under the 8 & 9 Will. 3, c. 30.

It has been held, that the sessions have power, under the 8 & 9 Will. 3, c. 30, to award costs, where the order is quashed for informality, as well as where the appeal is determined on the merits(*o*); but that the statute does not extend to the allowance of costs, where the appeal is adjourned to the next sessions(*p*). The sessions must either give, or not give, costs, at the time they make their order on hearing the appeal. It seems, therefore, that when they confirm an order subject to a case, they should make a conditional order for costs and intervening maintenance(*q*).

The allowance of the costs to the party in whose favour the appeal is determined, under the 8 & 9 Will. 3, c. 30, is discretionary on the part of the sessions, and cannot be compelled by *mandamus*(*r*); but the expenses of keeping the pauper, which are incurred by the appellant parish from the time of his removal until the order is discharged by the sessions on appeal, and are directed to be awarded by the 9 Geo. 1, c. 7, are not discretionary on the part of the sessions, and the allowance of these may be enforced by *mandamus*(*s*). When the removing parish, after abandoning the order of removal, neglects to pay the costs of maintenance, the parish to which the removal is made may, notwithstanding such abandonment, enter the appeal for the purpose of compelling the payment of such costs; for the sessions have no power to grant these costs, unless the appeal is entered(*t*).

When the sessions confirm an order of removal, with costs, under the 4 & 5 Will. 4, c. 76, s. 82, the amount should be specified or ascertained before the end of the sessions; for a taxation of costs, after the end of the sessions, is irregular, notwithstanding the amount may have been submitted to the chairman (after the termination of the sessions) and approved of by him; and an order for payment of such taxed costs cannot be enforced. And the same observation applies, where an order is confirmed by the recorder of a borough court(*u*).

(*o*) *R. v. Cottingham*, 2 Ad. & E. 250.

(*p*) *R. v. Stansfield*, Burr. S. C. 205.

(*q*) *R. v. Great Chart*, Burr. S. C. 194.

(*r*) *R. v. Nottingham Justices*, 2 Bott, 776.

(*s*) *St. Mary's, Nottingham, v. Kirk-*

lington, 2 Bott, 776.

(*t*) *R. v. Norfolk Justices*, 5 B. & Ald.

484.

(*u*) *Reg. v. Long*, 11 Ad. & E. (N.S.) 740.

*Forms relating to Orders of Removal.*1. *Information (v) of Overseers in order to remove a Pauper.*

County of —, } The information and complaint of A. B. and C. D., church-
to wit. } wardens, and E. F. and G. H., overseers of the poor of the parish
of —, in the county of —, unto us, two of her Majesty's justices of the peace in
and for the county of —, (one being of the *quorum*,) who say, that W. O., late of
the parish of —, in the county of —, labourer, hath lately come into their said
parish of —, not having obtained any legal settlement there, and hath become
chargeable thereto: And that the last legal settlement of the said W. O. is in the said
parish of —, in the said county of —, and that he ought by law to be sent there-
unto, and they pray that justice may be done in the premises. Dated this — day
of —, 1843.

J. P.

T. P.

2. *Summons (x) of one Justice to the Overseers of the Parish, to which it is intended to remove a Pauper, to show cause against the Order of Removal.*

County of —, } To the churchwardens and overseers of the parish of —, and
to wit. } to each and every of them.

This is to summon you, or some or one of you, to appear (if you shall think fit) before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, and such other of her Majesty's justices of the peace for the said county of —, as shall be at the Crown Inn at —, in the said county of —, at the hour of — in the — noon of the same day, to show cause why W. O., a pauper actually chargeable to the parish of — in the said county, should not be removed from the said parish of — to your said parish of — in the county of —. Given under my hand and seal, this — day of —, in the year of our Lord 1843.

J. P. (L. S.)

3. *Warrant of one Justice to bring a Pauper before two Justices, to be examined as to his Settlement.*

—, }
to wit. } To the constable of the parish of —.

Forasmuch as complaint hath been made before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, by the churchwardens and overseers of the poor of the said parish of —, in the county aforesaid, that W. O., now resident in the said parish of —, hath come to inhabit in the said parish, not having gained any legal settlement therein, nor produced any certificate owning him to be settled elsewhere, and that the said W. O. hath become chargeable to the said parish of —, and that his last legal settlement is the parish of — in the said county: These are therefore to require you to bring the said W. O. before me, and such other of the justices of the peace of the said county as may be assembled at the Crown Inn at — in the said county, on the — day of — instant, at — o'clock in the — noon of the same day, to be examined concerning the place of his last legal

(v) See *ante*, p. 928.

(x) This summons is not usual or necessary, but it may be advisable when the

two parishes are in the neighbourhood of each other.

settlement, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal, this — day of —, in the year of our Lord 1843.

J. P. (L. s.)

4. *Examination (y) of a Pauper as to a derivative Settlement from his Father.*

Kent, } The examination of W. O., now resident in the parish of —, in the
to wit. } county of Kent, labourer, of and concerning the place of his last legal
settlement, taken upon oath before us, two of her Majesty's justices of the peace in
and for the said county, the — day of —, 1843: Who upon his oath saith, that
he is about twenty-six years of age, and that he lived for several years with his father
and mother, and as part of their family, in the parish of — in the county of Surrey,
and that his father, some time before the year —, gained a settlement in the said
parish of —, by renting and occupying a dwelling-house of one —, in the said
parish of —, at the yearly rent of 14l., for the term of two years and upwards:
And this examinant saith, that he hath never, to the best of his knowledge and belief,
done any act whereby to gain a settlement in his own right; and that on or about the
1st day of January, A. D. 1832, he was lawfully married to Sarah, his present wife, in
the parish church of —, in the county of —, by whom he hath two children,
namely, John, aged six years, and Sarah, aged three years, or thereabouts, and that he
is now actually chargeable to the said parish of — (z).

Taken and sworn before us, the day }
and year first above written. }

W. O.

J. P.

T. P.

5. *The like, as to a Pauper's having gained a Settlement by Hiring and Service.*

Essex, } The examination of W. O., now resident in the parish of —, in the
to wit. } county of Essex, labourer, of and concerning the place of his last legal
settlement, taken upon oath before us, J. P. and T. P., esquires, two of her Majesty's
justices of the peace in and for the said county, the — day of —, 1843: Who
upon his oath saith, that between four and five years ago, he, then a single man, was
hired by, and did contract and engage to serve, one A. B., of the parish of — in the
county of —, miller, for one year, at the wages of 8l. a year, and that he served
his said master under that hiring one whole year, in the said parish of —, (viz. from
the 11th day of October, in the year of our Lord 1838, to the 11th day of October, in
the year of our Lord 1839,) and received a full year's wages; since which time he,
this examinant, hath not, to the best of his knowledge and belief, done any act whereby

(y) See *ante*, p. 929, 932, 940.

(z) The examination must show, on the face of it, every fact necessary to give the justices jurisdiction to remove; *Reg. v. Altermun*, 10 Ad. & E. 699; therefore, if it do not show that the pauper was chargeable, it is a fatal objection; *Reg. v. Black Callerton*, 10 Ad. & E. 679; and the like, if it does not show, from the facts stated, that the pauper really gained a settlement;

Reg. v. Middleton in Teesdale, 10 Ad. & E. 688. Copies of all the examinations, if more than one is taken, must be sent with a copy of the order to the overseers of the parish to which the removal is made; for the omission of any one is ground of appeal, although it may not contain the evidence on which the order is in fact founded; *Reg. v. Outwell*, 9 Ad. & E. 836.

to gain a subsequent settlement; and that about three years ago he was lawfully married to C. D. his present wife, in the parish church of —, in the county of —, by whom he has one child, namely, William, aged two years, and that he this ex-
 aminant and his said wife and child are now actually chargeable to the said parish of —, in the said county of —.

Taken and sworn before us, the day }
 and year first above written. }

W. D.

J. P.

T. P.

6. *Examination (a) of an Irish Pauper in order to his Removal, under 3 & 4 Will. 4, c. 40.*

County of —, } The examination of —, taken on oath before us —, two of
 to wit. } her Majesty's justices of the peace acting in and for the county
 ["riding, city, borough, town corporate, division," or "liberty"] aforesaid, this —
 day of —, in the year of our Lord 1843: Who on oath saith, that, according to the
 best of his knowledge and belief, he was born in —, in that part of the united king-
 dom called Ireland, [or "Scotland," or "in the Isle of Man," or "Scilly,"] which he
 left about — years ago, and hath done no act whereby to gain a settlement in that
 part of the united kingdom called England, and hath actually become and is now
 chargeable to the parish of —, in the county of —, and that he hath a wife named
 —, and — children, neither of which children has gained a settlement in England.

Sworn the day and year first }
 above written before us, }

A. B.

C. D.

J. P.

T. P.

7. *Order (b) of Removal on the above Examination.*

—, }
 to wit. } To the constable of the parish of —, in the county of —.

Whereas complaint hath been made by the churchwardens and overseers of the poor of the parish [or "township"] of —, in the said county of —, unto us, whose names are hereto set and seals affixed, two of her Majesty's justices of the peace acting in and for the said county, (one being of the quorum,) that —, a person born in Ireland, [or "Scotland," or "the Isle of Man," or "Scilly,"] hath become and is now actually chargeable to the said parish: And whereas, upon examination of the said —, taken upon oath before us, (which examination is hereto annexed,) it doth appear, and we do adjudge, that the said — hath not gained a settlement in England, and that he hath a wife named —, and — children, viz. —, neither of which children has gained any settlement in England: These are therefore to require you, the said constable of — aforesaid,* to convey the said —, his wife and family aforesaid, to Ireland [or "Scotland," &c.] in the manner directed by the justices of the said county of —, in pursuance of the provisions of a certain act made and passed in the fourth

(a) This form is given by the act, see
ante, p. 924.

(b) This form is given by the statute.

year of the reign of King William the Fourth, intituled [*here set out the title of the act*].
Given under our hands and seals, this — day of —, in the year of our Lord
1843.

J. P. (L. S.)

T. P. (L. S.)

8. *General Order of Removal (c), under 13 & 14 Car. 2, and 4 & 5 Will. 4, c. 76, s. 79.*

Kent,) To the churchwardens and overseers of the poor of the parish of —,
to wit.) in the county of —, and to the churchwardens and overseers of the poor
of the parish of —, in the county of —, and to each and every of them.

Whereas complaint hath been made unto us, whose names are hereunto set, and seals affixed, being two of her Majesty's justices of the peace in and for the county of Kent, (one of whom is of the *quorum*,) by the churchwardens and overseers of the poor of the parish of —, in the said county, that W. O., and C., his wife, and John, their son, aged two years, have come to inhabit in the said parish of —, not having gained a legal settlement there; and that the said W. O., and C., his wife, and John, their child, are now actually chargeable to the said parish of —: We, the said justices, upon due proof made thereof, as well upon examination of the said W. O. upon oath, as otherwise, and upon due consideration had of the premises, do adjudge the same to be true; and we do likewise adjudge, that the lawful settlement of the said W. O., and his wife and child, is in the said parish of —, in the county of —: We do therefore require you, the churchwardens and overseers of the said parish of —, or some one of you, to convey the said W. O., together with his said wife and child, from and out of the said parish of — to the said parish of —, and them to deliver to the churchwardens and overseers of the said parish of —, or to some one of them, together with this our order, or a true copy thereof, at the same time showing to them the original; and we do also hereby require you, the said churchwardens and overseers of the poor of the said parish of —, to receive and provide for the said W. O., and his said wife and child, according to law: But you, the said churchwardens and overseers of the said parish of —, are hereby required to take notice, that the said poor persons are not to be removed by you under this our order, until twenty-one days after a notice in writing of their being so chargeable as aforesaid to your parish, accompanied by a copy or certificate of this our order, and by a copy of the examination upon which such order was made, shall have been sent by you, by post or otherwise, to the overseers of the said parish of —, unless they shall by writing under their hands agree to submit to our said order, and to receive the poor persons above-mentioned: And you, the said churchwardens and overseers of the said parish of —, are also required to observe, that if notice of appeal against this our order of removal shall be received by you within the said period of twenty-one days, it will not be lawful to remove such poor persons until after the time for prosecuting such appeal shall have expired, or, in case such appeal shall be duly prosecuted, then not until after the final determination of such appeal. Given under our hands and seals, this — day of —, in the year of our Lord 1843.

J. P. (L. S.)

T. P. (L. S.)

9. *Notice that an Order of Removal has been made (c).*

To the overseers [or "guardians"] of the poor of the parish of —, in the county of —.

We hereby give you notice, that W. O. a poor person, with his wife C. and their child John, aged two years, have become chargeable to the parish of —, in the county of —, and that an order of two justices has been duly obtained by us for their removal to your parish of —, as their last place of legal settlement; and we herewith send you the counterpart of the said order, and a copy of the examination upon which such order was made.

Dated this — day of —, 1843.

[To be signed by the majority of persons acting as overseers, or by three guardians.]

10. *Suspension (d) of an Order of Removal, to be indorsed on the Order.*

Whereas it manifestly appears unto us, J. P. and T. P., esquires, the justices within-named, that C., the wife of the pauper within-named, is at present unable to travel, by reason of sickness and infirmity, and that it would be dangerous for her so to do: We do therefore hereby suspend the execution of the within order of removal, until it shall be made appear unto us that the same may safely be executed, without danger to the wife of the said pauper. Given under our hands the — day of —, in the year of our Lord 1843.

J. P.

T. P.

11. *Form of a subsequent permission to execute the Order of Removal, to be indorsed thereon, with an Order for the payment of the Expenses incurred by the Suspension.*

Whereas it hath been now made to appear unto us the justices above-mentioned, and we are fully satisfied, that the within order of removal may be now executed, without danger to the wife of the within-named W. O.: We do therefore hereby order the same to be forthwith put in execution accordingly: And whereas it is duly proved to us upon oath, that the sum of £— hath been necessarily incurred by the suspension of the within order, we do therefore order and direct the churchwardens or overseers of the poor of the parish of —, to which parish the said W. O. and his wife and child within-named were ordered to be removed, to pay the said sum of — to A. B. upon demand. Given under our hands the — day of —, in the year of our Lord 1843.

J. P.

T. P.

12. *Order of Removal of a certificated Person back to the certifying Parish, he having become chargeable, and for payment of Costs of such Removal.*

Kent, } To the churchwardens and overseers of the poor of the parish of —, in
to wit. } the county of —, and to the churchwardens and overseers of the poor of
the parish of —, in the county of —.

Whereas complaint hath been made by the churchwardens and overseers of the poor of the above mentioned parish of — unto us, whose names are hereunto set and seals

affixed, being two of her Majesty's justices of the peace in and for the said county of —, one of whom is of the quorum, that W. O., C. O., his wife, and John their son, aged two years, having for some time last past dwelt in the parish of — aforesaid, under a certificate bearing date the — day of —, in the year of our Lord 1840, under the hands and seals of — and —, churchwardens, and — and —, overseers of the poor of the said parish of —, attested by two credible witnesses, and allowed by J. P. and T. P., esquires, two of her Majesty's justices of the peace for the said county of —, according to the directions of the several acts of parliament in such case made and provided, are now become chargeable to the said parish of —: And whereas it appears to us, as well upon the oath of the said W. O. as otherwise, that neither of them the said W. O., C. O., and J. O. has gained any legal settlement since the date of the said certificate: We the said justices do therefore, upon due consideration of the premises, hereby adjudge that the said W. O., C. O., and J. O. are become chargeable to the said parish of —, and that their place of last legal settlement is in the said parish of —: And we do therefore require you, the said churchwardens and overseers of the poor of the said parish of —, or some or one of you, to convey the said W. O., C. O., and J. O. from and out of your said parish of — to the said parish of —, and them to deliver to the churchwardens and overseers of the poor there, or to some or one of them, together with this our order, or a true copy thereof, at the same time showing to them the original: And we do also hereby require you the said churchwardens and overseers of the poor of the said parish of — to receive and provide for the said W. O., C. O., and J. O. as inhabitants of your parish: And we do also hereby order and direct you the said churchwardens and overseers of the poor of the said parish of — to reimburse and pay unto the said churchwardens and overseers of the poor of the said parish of — the sum of £—, being the amount of the reasonable charges, which they the said churchwardens and overseers of the poor of the parish of — have been put unto in maintaining and removing the said W. O., C. O., and J. O., and which have been ascertained and allowed by us the said justices at the sum above mentioned. Given under our hands and seals at —, in the county aforesaid, this — day of —, in the year of our Lord 1843.

J. P. (l. s.)
T. P. (l. s.)

13. *Information of an Overseer of the Poor, that the Expenses directed to be paid, on taking off the Suspension from an Order of Removal, have been refused or neglected to be discharged, under 35 Geo. 3, c. 11, s. 2(e).*

Kent. } The information and complaint of A. B., one of the overseers of the
to wit. } poor of the parish of —, in the county of Kent, made on oath before
me J. P., esquire, one of her Majesty's justices of the peace in and for the said county,
the — day of —, in the year of our Lord 1843.

Who says that by an order under the hands and seals of G. M. and W. P., esquires, two of her Majesty's justices of the peace in and for the said county of Kent, bearing date the — day of —, in the year of our Lord 1842, W. O. a pauper then actually chargeable to the said parish of —, was ordered to be removed from the said parish of — to the parish of —, in the county of —, as the place of his last legal settlement; but that the execution of the said order of removal was by the said two justices, by indorsement on the said order, suspended for the reason therein expressed: And

(e) See *ante*, p. 917.

that by a subsequent indorsement on the said order by the said two justices, bearing date the — day of —, in the year of our Lord 1843, the said suspension was removed, with a permission to execute the said order, and the said justices thereby certified, that it appeared to them that the sum of £— had been incurred by the suspension of the said order, which sum they the said justices did therefore order and direct the churchwardens and overseers of the poor of the parish of —, to which parish the said W. O. was ordered to be removed, to pay — to the said A. B. upon demand : And that the said order of removal has since been carried into execution, and the original order, with the said indorsement thereon, hath been duly tendered and shown to —, one of the overseers of the said parish of —, when the said sum of £— was duly demanded of him by the said A. B. on the — day of — last, but that the said — refused, and has since neglected to pay the same. And that no notice of appeal has been given against the said order within three days from the time of making such demand as aforesaid, nor at any time since. The said complainant, therefore, prays such remedy in the premises as is provided by law.

Taken before me,

J. P.

14. *Summons on the foregoing Information.*

Kent, }
to wit. } To the constable of —.

Whereas information and complaint hath been made before me, J. P., esquire, one of her Majesty's justices of the peace for the said county, on the oath of A. B. of —, one of the overseers of the poor of the parish of —, in the said county, that by an order [*set it forth as in the above information*] These are therefore to require you forthwith to summon the said — to appear before me at —, in the said county, on — the — day of —, at the hour of — in the — noon of the same day, to answer to the said information and complaint, and to be further dealt with according to law. And be you then there to certify what you shall have done in the premises Herein fail you not. Given under my hand this — day of —, 1843. J. P.

15 *Warrant of Distress thereupon.*

Kent, }
to wit. } To the churchwardens and overseers of the poor of the parish of —, in the said county of —.

Whereas it has been duly made appear unto me, J. P., esquire, one of her Majesty's justices of the peace in and for the county of Kent, as well upon the oath of A. B., one of the overseers of the poor of the said parish of —, as otherwise, that by an order under the hands and seals of G. M. and W. P., esquires, two of her Majesty's justices of the peace in and for the said county, bearing date the — day of —, in the year of our Lord 1842, W. O. a pauper, then actually chargeable to the said parish of —, was ordered to be removed from the said parish of — to the parish of —, in the county of —, as the place of his last legal settlement, but that the execution of such order was by the said justices, by indorsement thereon, suspended for the reason therein expressed : And further, that by a subsequent indorsement on the said order of removal under the hands of the said two justices, bearing date the — day of —, in the year of our Lord 1843, the said suspension was removed with permission to execute the said order ; and the said justices thereby certified that it appeared unto them, that the sum of £— had been necessarily incurred by the suspension of the said

order, which said sum the said justices did therefore order and direct the churchwardens and overseers of the poor of the parish of —, to which parish the said W. O. was ordered to be removed, to pay to A. B. upon demand: And whereas it appears to me, that the said order of removal has been carried into execution, and that the said sum of £ — was duly demanded of and from —, one of the overseers of the poor of the parish of — aforesaid, by him the said A. B., on the — day of — last, but that the said — then refused and has since neglected to pay the same; and that no notice of appeal has been given against the said order within three days from the time of making such demand as aforesaid, nor at any time since: These are therefore to require you to levy the said sum of £ — by distress and sale of the goods and chattels of the said —, the person so refusing and neglecting payment of the same as aforesaid; and also the further sum of — (*f*), being the costs attending the same: And if, within the space of four days next after such distress by you taken, the said respective sums of £ — and £ — shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you detain the said respective sums, rendering to the said N. O. the overplus on demand. Given under my hand and seal the — day of —, in the year of our Lord 1843.

J. P. (*L. S.*)

16. *Notice of Appeal (g) against an Order of Removal.*

To the churchwardens and overseers of the poor of the parish of —, in the county of —, and to each and every of them.

We whose names are hereto subscribed, being the churchwardens and overseers of the poor of the parish of —, in the county of —, do hereby give notice to you and every of you, that we do intend, at the next general quarter sessions of the peace to be holden at —, in and for the said county of —, on — the — day of — instant, to commence and prosecute an appeal against a certain order of J. P. and T. P., esquires, two of her Majesty's justices of the peace acting in and for the said county of —, bearing date on the — day of — instant, for and concerning the removal of W. O., C. O., his wife, and J. O. their son, aged two years, from the parish of — aforesaid, to the said parish of —.

And that the grounds of such appeal are as follows:—1st. Because the pauper never acquired any settlement in the appellant parish in the manner stated in the examination sent to the appellants (*h*). 2ndly. Because the pauper, after the hiring and service mentioned in the said examination, namely, about three days before Christmas,

(*f*) This sum is not to exceed 40s. See 35 Geo. 3, c. 101, s. 2, *ante*, p. 917.

(*g*) See *ante*, p. 937, *et seq.* In stating the grounds of appeal, care should be taken to specify all that are intended to be relied on at the trial, excluding all those which are likely to be deemed frivolous and vexatious; for the appellant will not be allowed to give evidence of any grounds of appeal not set forth in this statement, even although it be merely a legal objection appearing upon the face of the order of removal (*R. v. Witherswick*, 6 Ad. & E. 273); while, on the other hand, if any

grounds of appeal are included in the statement, which shall be determined by the sessions to be frivolous and vexatious, the appellants are liable to pay the costs incurred by the other party in disputing such grounds. See *ante*, p. 954.

(*h*) If the appellants wish to hold the respondents to proof of the settlement, as stated in the examination of the pauper, they must negative it in their notice of appeal; otherwise the respondents will not be bound to prove it at the trial; *Reg. v. Hockworthy*, 7 Ad. & E. 492.

1832, hired himself to one A. B. of —, in the parish of —, in the county of —, to serve him for one year until Christmas 1833, and served him accordingly for the whole of that period. 3dly. Because the said pauper, after he quitted the service of the said A. B., namely, at Lady-Day 1834, rented a house from one C. D. at —, in the parish of —, in the county of —, at the yearly rent of £12, and occupied the same under such yearly hiring from the time last aforesaid for the space of one year and upwards, and paid the rent for the same to the amount of £10 and upwards. And we hereby give you notice, that at the trial of the said appeal, the appellants will avail themselves of all or any of the above grounds of appeal as they shall be then advised. Dated this — day of —, 1843.

E. F. }
G. H. } Churchwardens.
I. K. }
L. M. } Overseers (i).

17. *Supersedeas (k) of an Order of Removal.*

Kent, } Whereas by a certain order of removal under the hands and seals of
to wit. } us, J. P. and T. P., esquires, whose names are hereunto set and seals
affixed, being two of her Majesty's justices of the peace in and for the county of Kent,
bearing date the — day of — now last past, and purporting to be made upon the
complaint of the churchwardens and overseers of the poor of the parish of —, in the
said county, that one W. O. had then lately come to inhabit in the said parish, not
having gained a legal settlement there, nor produced any certificate owning himself to
be settled elsewhere, and that the said W. O. was actually chargeable to the said pa-
rish: We the said justices, upon proof then made thereof before us, and upon the exa-
mination of the said W. O. upon oath, and due consideration had of the premises, did
adjudge that the lawful settlement of the said W. O. was in the parish of —, in the
county of —, and therefore we required the said churchwardens and overseers of the
poor of the said parish of —, or some or one of them, to convey the said W. O.
from and out of their said parish to the said parish of —, and him to deliver, together
with our said order, or a true copy thereof, to the churchwardens and overseers of
the poor there, or to some or one of them, who were thereby required to receive and
provide for him as an inhabitant of their said parish: And whereas the said W. O. was
accordingly removed and conveyed from the said parish of — to the parish of —,
and delivered to the churchwardens and overseers of the poor there, together with a

(i) The notice must be signed by the majority of the churchwardens and overseers (*R. v. Justices of Warwickshire*, 6 Ad. & E. 873); or by three of the guardians, when guardians are appointed for the parish; and it may be served on one of the officers having the management of the poor of the removing parish (*Ibid.*) It must be served fourteen days at least before the first day of the sessions, reckoning exclusively of that day, and also of the day on which the notice is served. In order to prevent the removal of the pauper, the notice of appeal must be served within

twenty-one days after the receipt of the notice of chargeability; but, although it is not served within that period, the parish to which the removal is made may still appeal against the order, provided due notice of appeal is given according to the rules of the particular sessions (*R. v. Justices of Suffolk*, 4 Ad. & E. 310), and provided also the statement of the grounds of appeal is sent or delivered fourteen days as above-mentioned before the first day of the sessions.

(k) See *ante*, p. 935.

copy of our said order, pursuant to the directions therein contained : And whereas it has been since represented and duly made to appear unto us, the said justices, by the churchwardens and overseers of the poor of the said parish of —, that the said W. O. hath not any legal settlement in the said parish of —, and that the examination and declaration of the said W. O., taken upon the making of the said order as aforesaid, were founded in mistake, which hath since been discovered : We the said justices do, therefore, upon the application and at the request of the said churchwardens and overseers of the poor of the parish of —, (in order to prevent the charges and expenses of an appeal to the general quarter sessions of the peace for the said county of — against the said order of removal), hereby supersede, annul, vacate, and set aside the said order, and do command the churchwardens and overseers of the poor of the said parishes respectively to give up and return the said order and the copy thereof to us, that the same may be cancelled and made void to all intents and purposes whatsoever : And we do also require the said churchwardens and overseers of the poor of the said parish of — to receive back the said W. O., and to maintain and provide for him, until they can free themselves from the charge thereof by due course of law. Given under our hands and seals this — day of —, in the year of our Lord 1843.

J. P. (L. S.)

T. P. (L. S.)

18. *Warrant to levy by Distress on the Goods of Overseers the Costs of Appeal against an Order of Removal, adjudged at the Quarter Sessions (1).*

Kent, } To the constable of D., and to all other constables and peace officers in
to wit. } and for the said county.

Whereas it hath this day been duly made to appear unto us, J. P. and T. P., esquires, two of her Majesty's justices of the peace for the said county of Kent, as well upon the oath of A. B., one of the churchwardens of the parish of —, in the said county, as otherwise, that upon a certain appeal against our order for the removal of W. O. from the parish of —, in the said county, to the said parish of —, in the same county, the Court of Quarter Sessions for the county aforesaid, by a certain order dated the — day of — now last past, did, amongst other things, order that the churchwardens and overseers of the poor of the said parish of — should, upon notice to them or any of them given of the said order, pay to the churchwardens and overseers of the poor of the said parish of —, or to some one of them, their just and reasonable costs and charges occasioned by the trial of the said appeal; and did then and there grant a certificate certifying the amount thereof to be £ — : And whereas the said sum of £ —, so ordered and certified as aforesaid, was on the — day of — instant, duly demanded of and from C. D. and E. F., the overseers of the poor of the said parish of —, by the said A. B., who did then and there produce and show to the said C. D. and E. F. the said certificate; but they did not, nor did either of them, then, or at any time since, pay the said sum of £ —, or any part thereof, to the said A. B., or any person on his behalf, but have therein wholly made default; whereby and by virtue of the statute in such case made and provided, the said sum of £ — may be levied of the goods and chattels of the said C. D. and E. F., as overseers of the parish of — aforesaid : These are therefore to command you to make distress of the

(1) See *ante*, p. 954.

goods and chattels of the said C. D. and E. F.; and if, within the space of eight days next after the making of such distress, the said sum, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the monies arising by such sale, you do pay the sum of £—— to the churchwardens and overseers of the poor of the parish of —— aforesaid, or to one of them, rendering the overplus, if any, on demand, unto the said C. D. or E. F., the reasonable charges of making and keeping and selling the said distress being first deducted: And if no such distress can be made, that then you certify the same unto us, to the end that such further proceedings may be had therein as to the law doth appertain. Given under our hands and seals this —— day of ——, in the year of our Lord 1843.

J. P.

T. P.

ADDENDA TO “*Poor.*”

Page 675. *Commissioners.*]—By 5 & 6 Vict. c. 57, s. 1, the Poor Law Commissioners are to hold their office until the 31st July 1847, and thenceforth until the end of the then next session of parliament. By *sect. 2*, the Commissioners cannot appoint or continue in office more than nine Assistant Commissioners to act in England and Wales.

Commissioners for Inquiry.]—But whenever it may seem fitting to the Commissioners, or whenever they may be thereunto required by the Secretary of State for the Home Department, the Commissioners, with the consent of the Lords of the Treasury, shall appoint some person, being a doctor in medicine, a barrister at law, a member of the Royal College of Surgeons of London or Dublin, an architect or surveyor, and not being one of the Assistant Commissioners, or some two or more of such persons, to act, either in England or Ireland, as an Assistant Commissioner, for the purpose of conducting any special inquiry, for a period not exceeding thirty days; and the Commissioners shall delegate to every person so appointed all such of the powers of the Commissioners as they may deem necessary or expedient for summoning witnesses, and conducting such inquiry. Every such appointment shall be subject to the approval of one of the Secretaries of State, and every person so appointed shall, before he enter on the execution of his duties, take the oath prescribed by the act before one of the judges of the Queen’s Bench or Common Pleas, or one of the barons of the Exchequer, which is to be notified in the London Gazette, and by signifying the same under the seal of the Commissioners to the clerk of the peace of the county within which the inquiry in question is to be made.

Mode of conducting the Inquiry.]—By the same section, if any

person be charged with any misconduct in any matter relating to the administration of the laws for the relief of the poor, and if any special inquiry be directed to be made into such charge, the person bringing such charge shall be entitled to be heard either by counsel or attorney, as well as the person charged with such misconduct. But neither the person charged, nor the person bringing the charge, is to be released from the liability to be himself examined at any such inquiry, in respect of the matter of such charge, in the same manner as is provided by the 4 & 5 Will. 4, c. 76.

Page 676. *General Rules.*—By *sect. 3*, whenever any general rule of the Commissioners shall be in force, it shall not be lawful for the Commissioners to issue any particular rule, order, or regulation, addressed to any single parish or union, by which such general rule, or any part thereof, would be rescinded or suspended, unless with the approval in writing of the Secretary of State.

Operation of certain Orders.—By *sect. 4*, every order of the Commissioners suspending or dismissing any paid officer from the exercise of his office, in which the Commissioners shall declare that the urgency of the case requires that such order should take effect within the period of fourteen days, shall come into force at such time as the Commissioners shall in such order direct, notwithstanding fourteen days shall not have expired since a written or printed copy of the same shall have been sent by the Commissioners, as required by the 4 & 5 Will. 4, c. 76.

The Court of Queen's Bench will not take judicial notice of the rules made by the Poor Law Commissioners for the government of an union, under the 4 & 5 Will. 4, c. 76, s. 15.—*Reg. v. Dolgelly Union*, 8 Ad. & E. 561.

Page 678. *Appointment of Overseers.*—One part of the parish of A. comprised five districts, which were commonly called parishes, each having its own chapel. The residue of A. consisted of a district called M. and a hamlet called P., which together were reputed to be a parish, for the purpose of maintaining the poor; but neither had a church or chapel, the inhabitants of P. going to the parish church of A. The extent of the two was 1314 acres, and the population 1080 persons. There was a workhouse in M., to which the poor of both parts were sent. Separate overseers were appointed for each part, and each paid the poor in his own part, without inquiring whether they were settled in one or the other. The expenses of the poor in the two parts were borne, one third by P., and two

thirds by M.; the payments by each part being entered in weekly accounts, added together, and the amount apportioned; and payments made to M. on filiation bonds being apportioned in like manner; and P. and M. contributing in the same proportions to the parish church of A. The overseer of P. (and he only) levied and collected the poor rates there; he attended the vestry meetings in the parish of A., and paid the thirds of P. to the overseer of M. These were raised by rate laid and collected in P., without the interference of M.; and no general rate for P. and M. had ever been laid. P. had its own surveyor of highways and constable; and paupers had been removed to and from P., and orders of filiation made on complaint of the overseers of P. Held, that these circumstances did not afford a ground for a separate appointment of overseers for P., under the 13 & 14 Car. 2, c. 12, s. 21; there being no proof, that P. was a distinct township in the management of the poor, although there was evidence of an arrangement, as to the manner in which funds for maintaining the poor of both P. and M. should be levied and disposed of.—*Reg. v. Marriot*, 12 Ad. & E. 35.

In a township which is a perpetual curacy, having its own church, where marriages and burials are performed, and its own churchwardens raising its own church-rate, maintaining its own poor, and independent of the parish at large in all respects, except paying annually towards the repair of the parish church,—the churchwardens of the township are not, by virtue of their office, overseers of the poor.—*R. v. Justices of North Riding of Yorkshire*, 6 Ad. & E. 863.

Page 682. *Liability of Overseers.*]—Where an overseer distrained for a rate, not knowing there was an appeal against it, and immediately paid over the money so levied to a guardian under 22 Geo. 3, c. 83, s. 8, and the rate was afterwards lowered, on the appeal being heard; it was held, that the overseer, not being a wrongdoer, was not liable in an action for money had and received.—*Priestley v. Watson*, 2 Crompt. & M. 691.

Page 686. *Not accounting.*]—By 4 & 5 Will. 4, c. 76, s. 47, every overseer is required once in every quarter, in addition to the annual accounts by law required,—and where the rules of the Commissioners shall have come in force, then as often as those rules shall direct, but not less than once in every quarter,—to render to the guardians, auditors, or such other persons as by virtue of any statute or custom, or of the said rules, may be appointed to audit such accounts,—or, in default of any person being so appointed, then to the justices

at the petty sessions for the division,—a full and distinct account in writing of all monies and things committed to their charge, or received, held, or expended by them on behalf of any parish or union; and, if thereunto required, they must verify on oath the truth of such accounts, or subscribe a declaration to the truth thereof, under the penalties in the act provided for parties giving false evidence. Where overseers were indicted under this section for not accounting to the auditor of an union, upon request, on a day appointed by him, it was held, that the indictment must allege, that there was some rule, order, or regulation of the Commissioners, that the overseers should account upon such request, and that such order was duly sent to the overseers.—*Reg. v. Crossley*, 10 Ad. & E. 132.

Page 689. *Overseers' Accounts.*]—Where an item in overseers' accounts was for the expenses of defending an appeal against the accounts at the sessions, the Court of Queen's Bench quashed the allowance of the accounts, observing that such an item was bad on the face of it, and that no supposable facts could justify it; as the allowance or disallowance of his accounts was a matter entirely between him personally and the parish.—*R. v. Johnson*, 5 Ad. & E. 340.

Page 690. *Appeal against their Accounts.*]—An appeal lies against the accounts of an assistant overseer, unless there be any limitation in the warrant of appointment which prevents his being accountable to the parish. And where, in the case stated on appeal against such accounts, the sessions found that the assistant overseer executed all the duties of an overseer, the Court of Queen's Bench concluded that the warrant was before the justices at sessions, and was not limited as above mentioned. The appeal against an overseer's accounts, under 17 Geo. 2, c. 38, s. 4, must be made to the next practicable sessions after the accounts are published; that is, after they have been deposited with the churchwardens and overseers for public inspection.—*Reg. v. Watts*, 7 Ad. & E. 461.

Page 698. *Guardians.*]—Where by a local act the powers of overseers of the poor were vested in certain *ex officio* directors, and forty others annually nominated by a vestry chosen under the provisions of the act; and general powers for the management of the poor, with other powers not relating to the poor, were vested in the directors; it was held, that the Poor Law Commissioners had no power, under the 4 & 5 Will. 4, c. 76, s. 39, to order that the poor laws in the parish should be administered by a board of guardians

to be elected and constituted under the last mentioned act.—*R. v. Poor Law Commissioners, re St. Pancras*, 6 Ad. & E. 1.

Page 699. *Election of Guardians.*—The Commissioners have no power, under the 4 & 5 Will. 4, c. 76, ss. 15, 46, to appoint assistants to the returning officer for the election of guardians, to be paid out of the poor rates; nor to give the returning officer such power of appointment. And an order for the election of guardians, containing such a provision, was held to be wholly void.—*Reg. v. Hunt*, 12 Ad. & E. 130.

Under the 4 & 5 Will. 4, c. 76, ss. 26, 38, the Poor Law Commissioners formed an union of six townships, comprehending T. and L., and ordered that there should be eighteen guardians of the union, two of whom were to be elected by L., and the other sixteen by the other townships, in specified proportions; there not being less than two for any one township. The first, and two subsequent, annual elections took place, at each of which more than six guardians were elected for the union; but L. elected none on any occasion. Held, that the board of guardians elected on the third election, though their number was not complete, might, under *sect. 38*, make an order on the overseer of T. for payment of money, conformably to the regulations issued for the union by the Commissioners; and a mandamus went to compel the overseers to pay. It seems, too, that the board of guardians elected on the first election might have acted, though their number was not complete.—*Reg. v. Todmorden*, 1 Ad. & E. N. S. 185.

By 5 & 6 Vict. c. 57, s. 8, in case any question shall arise as to the right of any person to act as an elective guardian, the Commissioners may inquire into the circumstances of the case, and issue such order therein, under their hands and seals, as they may deem requisite for determining the question. And no such order shall be liable to be removed by *certiorari* into the Court of Queen's Bench, unless the application for such writ shall be made during the term next after the issuing of such order.

By *sect. 9*, if any person, put in nomination for the office of guardian, tender to the officer conducting the election his refusal in writing to serve such office, the election of guardians, so far as regards such person, shall be no further proceeded with.

Continuance of Guardians in Office.—By *sect. 10*, where no person shall be elected for the office of guardians at any annual election, the persons elected for the previous year may continue to act as guardians until the next annual election.

New Election..]—By *sect. 11*, the Commissioners may accept the resignation of any person elected as a guardian, tendered for any cause which the Commissioners may deem reasonable; and in every case of omission to elect, or of vacancy in any board of guardians by death, resignation, or disqualification, the Commissioners are empowered to order a new election.

Where Vacancies occur..]—By *sect. 12*, in case the full number of guardians shall not be elected, or in case of any vacancy by the death, removal, resignation, refusal, or disqualification to act of any elected guardian, the other or remaining members of the board, being not less than three, shall be competent to act until the next election, or until the completion of the board, as if the number of the board were complete; and no acts or proceedings shall be questioned on account of any failure to elect any guardian, or on account of any such vacancy.

Defective Election..]—By *sect. 13*, no defect in the qualification or election of any person voting as a guardian at a board, the majority of persons assembled at which shall be entitled to act as guardians, shall be deemed to vitiate, or make void any proceedings of such board, in which he may have taken part.

Persons incapable of serving..]—By *sect. 14*, no assistant overseer, nor any paid officer engaged in the administration of the laws for the relief of the poor, nor any person, who, having been a paid officer, shall have been dismissed within five years previously from such office, under the provisions of the 4 & 5 Will. 4, c. 76, shall be capable of serving as a guardian, nor any person receiving any fixed salary or emolument from the poor rates in any parish or union.

Competency to act as Justices..]—By *sect. 15*, no justice of the peace shall be disabled from acting, as such justice, at any petty, or special, or general, or quarter sessions in any matter, merely on the ground that such justice is an *ex officio* member of any board of guardians, complaining, interested, or concerned in such matter, or has acted as such at any meeting of such board.

Corporate Powers of Guardians..]—By *sect. 16*, every board of guardians constituted under the 4 & 5 Will. 4, c. 76, may accept, take, and hold, on behalf of the union or parish respectively for which they may act, any lands, buildings, goods, effects, or other property, as a corporation; and in all cases may sue and be sued in their corporate names.

Mode of application by Guardians, on any Complaint..]—By *sect. 17*, wherever a board of guardians is empowered to make any

order, or to prefer any complaint, claim, or application before justices, or otherwise, if any such board resolve to make the same, a copy of the minute of such resolution, signed by the presiding chairman of the board, and sealed with their seal, and countersigned by their clerk, or person acting as their clerk, shall be deemed and taken to be sufficient proof of the making of such order, or of the preferring of such complaint, &c. And whenever, either for the purpose of making an order for the removal of a pauper, or on the trial of an appeal against such order, or for any other purpose, it shall be necessary to prove to what parish a pauper has become chargeable (if in such parish the laws for the relief of the poor shall be administered by a board of guardians or a district board) a certificate of such pauper having so become chargeable, signed, sealed, and countersigned as aforesaid, shall be sufficient proof to what parish, and at what time such pauper became and was chargeable, unless the contrary shall be proved by other legal evidence. And in cases, in which the guardians are or may be empowered to make any application or complaint, or to take any proceeding before the justices at any petty, or special, or general, or quarter sessions, it shall be lawful for any officer of such guardians empowered by any board of such guardians by an order in writing under the hand of the presiding chairman of such board, and sealed with the common seal of such guardians, to make such application or complaint, or to take such proceedings on behalf of such guardians, as effectually to all intents and purposes as if the same were made or taken by such guardians, or any of them, in person.

Page 700. *Pauper Lunatics.*—By 5 & 6 Vict. c. 57, s. 6, every board of guardians, appointed under the provisions of the 4 & 5 Will. 4, c. 76, or acting under the regulations of the Commissioners for the relief of the poor, and the relieving officers of such guardians, shall have the like powers as overseers have, with respect to insane persons under the 9 Geo. 4, c. 40, or of any act passed to amend the same. Every such board of guardians shall from time to time pay or cause to be paid to the treasurer, managers, or keepers of any county lunatic asylum, public hospital, or licensed house respectively, all costs lawfully due in respect of any poor person maintained therein; and if such costs shall not be duly paid by the guardians or overseers of the parish to which such poor person may have been chargeable, then any two justices may proceed for the recovery of the costs, by making and enforcing an order for the same on the

overseers of the parish, according to the provisions of the said acts. The board of guardians may contract with any person duly licensed to practise as a medical man, to certify as to the state and condition of insane persons, under the provisions of the 9 Geo. 4, c. 40. Whenever any insane person is relieved by the board of guardians, or any of their officers, the relieving officer, within whose district the parish is situate to which such person may be chargeable, or in which such person may be found destitute, shall give the like information to some justice of the peace acting for the division of the county within which such parish is situated, as is required by the 9 Geo. 4 of overseers, and subject to the like provision for neglect. The clerk to every such board of guardians shall, on the 15th August in every year, or as soon after as may be, make out and sign two true and faithful lists of all insane persons chargeable in the parish or union, in the form in the schedule to the act; and shall, on or before the 1st September next succeeding, transmit one copy of such list to the clerk of the peace for the county within which the parish to which such insane person is chargeable is situated, or to his deputy, to be by him laid before the justices at the next quarter sessions, and the other copy of such list to the Commissioners. And, in future, the overseers of any parish shall not be required to make the annual return required of them by the 9 Geo. 4, c. 40.

Page 701. *Meetings of Board of Guardians.*—By 5 & 6 Vict. c. 57, s. 7, wherever the whole of any parish or parishes is situated at a greater distance than four miles from the place of meeting of the board of guardians of the union, of which such parish or parishes may form part, the Commissioners, on the application of the board of guardians, may form such parish or parishes into a district, and direct the guardians from time to time to appoint a committee of their members to receive applications of poor persons requiring relief in such district, to examine into the cases of such poor persons, and to report to the guardians thereon.

Page 703. *Clerk to the Board of Guardians.*—On motion for a mandamus to the guardians of a poor law union to admit J. to the office of their clerk, it appeared that J. and R. had been candidates for the clerkship, but that at a meeting of the persons acting as guardians to elect, R. had the majority of votes, and was declared elected. J. suggested, as a ground for the rule, that several of the guardians, whose votes gave R. the majority, were themselves not duly elected. Assuming that the Court would grant a mandamus

to admit to this office, the Court refused to grant it for the purpose of scrutinizing the elections of guardians who had voted: and that if this inquiry were open, the Court would not grant the writ, since it did not appear who were the proper persons to make a return; and if the guardians *de facto* might make it, they might also appoint a clerk.—*Reg. v. Doljelly Union*, 8 Ad. & E. 561. And see 5 & 6 Vict. c. 57, s. 13, *ante*, p. 971.

In a poor law union formed under Gilbert's Act, 22 Geo. 3, c. 83, the Commissioners may, under 4 & 5 Will. 4, c. 76, s. 46, appoint a clerk (with a salary) to attend meetings of the guardians, keep minutes of their proceedings, conduct their correspondence, communicate orders from the Commissioners and guardians to the persons administering relief within the union, give instructions for executing such orders, and report neglects, &c.; and to keep a book of monies received and paid, orders and checks given, accounts passed, and salaries ordered to be paid by the board of guardians; to make up and balance the union accounts, and abstract them quarterly, &c.; to assist the auditor in making a quarterly abstract of the accounts of each parish; and to revise the accounts of the master of the poorhouse. But they cannot direct that such clerk shall, as a part of his duties, "prepare or superintend the preparation, and take measures for issuing the prompt and correct return, of all such statistical information and reports as may be required for the public service;" an order for the government of an incorporation containing such a clause being altogether void.—*Reg. v. Poor Law Commissioners, Allstonefield*, 11 Ad. & E. 558.

Page 704. *Auditors.*—The Commissioners under Gilbert's Act may also direct the appointment of an auditor for the union, to audit the accounts of the incorporation and its several parishes, at proper periods, to examine into the expenditure, and allow or disallow charges, and to see that the accounts are properly stated and supported by vouchers, and all sums received, or which ought to have been received, brought into account; with power, in case the accuracy of any account shall be doubted, to compel the appearance of persons and production of documents.—*Ibid.*

Page 729. *Unions.*—Under the 26th section of 4 & 5 Will. 4, c. 76, the Poor Law Commissioners have power to form an union of parishes, although one of them has a local act for the government of the poor, under which there is a governing body, having power to build workhouses, maintain and employ the poor, assess rates in de-

fault of assessment by the overseers and inhabitants, hold property for the purposes of the act, and make orders for the government of the poor not inconsistent with the statute law.—*R. v. Poor Law Commissioners, Re Whitechapel Union*, 6 Ad. & E. 34.

Where the Commissioners form several parishes into an union, under the above section, but not for the purpose of rating, they cannot, by order under sect. 46, appoint a collector of the poor rate for any parish or parishes of such union.—*Reg. v. Poor Law Commissioners, Re Cambridge Union*, 9 Ad. & E. 911.

Pages 735, 742. *Chaplain.*]—The Poor Law Commissioners may order the guardians of an union to appoint a chaplain to the union workhouse, with a salary; such chaplain being an officer, within the meaning of the 4 & 5 Will. 4, c. 76, s. 46, interpreted by sect. 109. And it is no objection to such order, that, by a previous order not expressly altered or rescinded, the Commissioners have authorized the guardians to appoint such chaplain if they shall deem it necessary, and have specified his duties in case it shall have been deemed necessary to appoint him.—*Reg. v. Braintree Union*, 1 Ad. & E. N. S. 130.

Page 756. *Setting occasional Poor to Work.*]—By 5 & 6 Vict. c. 57, s. 5, the guardians of any parish or union, subject to the powers of the Poor Law Commissioners, may prescribe a task of work to be done by any person relieved in any workhouse, in return for the food and lodging afforded to such person. But it shall not be lawful to detain any person against his will, for the performance of such task of work, for any time exceeding four hours from the hour of breakfast in the morning succeeding the admission of such person into the workhouse. And if any such person, while in such workhouse, refuse or neglect to perform such task of work suited to his age, strength, and capacity, or wilfully dirty or injure his own clothes, or damage any of the property of the board of guardians, he shall be deemed an idle and disorderly person, within the meaning of the (*Vagrant Act*) 5 Geo. 4, c. 83, s. 3.

Page 769. *Liability of Children to maintain their Parents.*]—Under the 43 Eliz. c. 2, s. 7, and 59 Geo. 3, c. 12, s. 26, which authorize the making of orders on children, having sufficiency, to maintain their parents, such maintenance to be assessed by justices of the county where the parties dwell,—an order describing the party, as T. G. “of” the parish of M. in the county, &c. (for which the justices act) shows, distinctly enough, that he dwells within that

county. And where the order recited a complaint made by the parish officers against T. G., described as above,—a summons issued against *the said* T. G., and his appearance before the justices, &c.,—and then went on to adjudicate that the said T. G. is of sufficient ability, and shall forthwith pay, &c.: *Held*, that the dwelling of T. G. in the county was sufficiently stated, by reference in the adjudication.—*Reg. v Toke*, 8 Ad. & E. 227.

Ports—See Rivers and Navigation.

Porterage.

BY the 39 Geo. 3, c. lviii. s. 1, the following rates of porterage are declared to be only those lawful to be taken for the delivery of any parcel or other thing, not exceeding fifty-six pounds weight, within the cities of London and Westminster, and the borough of Southwark, and the suburbs and liberties thereof respectively, and other parts contiguous thereto, not exceeding half a mile from the end of the carriage pavement.

For any distance not exceeding a quarter of a mile *3d.*

Not exceeding half a mile *4d.*

Not exceeding one mile *6d.*

Not exceeding one mile and a half *8d.*

Not exceeding two miles *10d.*

And the additional sum of *3d.* for every further distance not exceeding half a mile.

Penalty for Extortion.—By *sect. 2*, if any porter, or other person, employed in the porterage or delivery of boxes, baskets, packages, parcels, game, or other things mentioned in the act, shall ask or demand, or receive or take, any greater sum than the rate fixed by the act, he is liable to a penalty not exceeding 20s., nor less than 5s.

Tickets to be Delivered.—By *sect. 3*, before any parcel is sent from the inn, or other place to which the same is brought, there shall be made out and given to the porter employed in the delivery thereof a card or ticket, whereon shall be distinctly printed or written the name and description of the inn or other place from whence the same is sent, and the sum due for the carriage thereof, and the christian name and surname of the porter employed in the delivery, which ticket shall be delivered by the porter with the parcel. And

if any parcel is sent from any inn or other place without such ticket, the innkeeper, warehousekeeper, or other person, shall for every such offence forfeit not exceeding 40s. And any porter who shall not at the time of the delivery of the parcel leave therewith the ticket, or who shall wilfully alter, obliterate, or deface any thing written or expressed thereon, shall forfeit 40s.; and if he shall ask or demand, or take or receive, any larger sum for the carriage of the article than is written or expressed in the ticket, he shall forfeit 20s.

Time for Delivery.—By *sect. 4*, every parcel brought to any inn or other place by any public stage coach or carriage, other than stage waggons, for the purpose of delivery within the limits specified by the act, except where the same shall be directed to be left till called for, shall be delivered according to the direction thereof within six hours after the arrival of such parcel at the inn or other place, unless such arrival shall be between the hours of four in the evening and seven in the morning, and in that case any such delivery shall be made within six hours after such hour in the morning; and in default thereof the innkeeper, warehousekeeper, or other person, is liable to a penalty not exceeding 20s. nor less than 10s.

By *sect. 5*, parcels brought by waggons must be delivered within twenty-four hours, under a like penalty.

Parcels directed to be left till called for.—By *sect. 6*, every parcel brought to an inn or other place, which shall be directed to be left till called for, shall, upon demand of the person properly authorized to receive the same, be delivered to him without any other charge than what is justly due for the carriage, and the additional sum of 2*d.* for the warehouse room, under a penalty not exceeding 20s. nor less than 10s.

And, by *sect. 7*, if the parcel is not sent for till the expiration of one week, then 1*d.* more for warehouse room may be charged.

By *sect. 8*, if any article, which is not directed to be left till called for, shall, before the same is sent for delivery from such inn or other place, be demanded by any person properly authorized to receive the same, it shall be thereupon delivered to him on payment of the sum due for the carriage, and also 2*d.*, under a penalty not exceeding 20s. nor less than 10s.

Misbehaviour of Porters.—By *sect. 9*, upon complaint made of the non-delivery, neglect, misconduct, or misbehaviour of any porter, to any justice, within whose jurisdiction the offence has been committed, or the offender shall be or reside, the justice may grant a

warrant to bring the party before him, and upon proof of the charge made upon oath, he is liable to a penalty not exceeding 20s. nor less than 5s.

Porterage, how recovered.—By sect. 10, rates of porterage may be recovered before one justice, who may levy the same and the costs by distress.

Limitation of Prosecutions.—By sect. 11, informations must be laid within fourteen days after the offence.

Recovery of Penalties.—By sect. 13, upon complaint made of any offence under the act, any justice, within whose jurisdiction the offence shall be committed, or the person charged with such offence shall reside, may summon the party accused, and also the witnesses on either side; and upon the appearance of the party, or in default of his appearance, then, upon proof being made of the service of the summons, the justice may proceed to hear and determine the matter in a summary way; and upon proof of the offence, by the oath of one witness, the justice may convict the party and award reasonable costs against him. In default of payment, a warrant may be issued for apprehending the offender; and in case he shall escape or go out of the jurisdiction of such justice, any other justice may, by indorsement of the warrant, authorize the execution thereof within his jurisdiction; and the justice who granted the warrant may, upon the offender being brought before him, commit him to some public prison or house of correction for not more than one calendar month, nor less than fourteen days, unless he shall sooner pay the sum mentioned in the warrant of commitment.

Default of Witnesses.—By sect. 14, witnesses not attending, after being duly summoned, are liable to a penalty not exceeding 40s., nor less than 20s.; and if they refuse to answer lawful questions, they may be committed for fourteen days.

Conviction.—By sect. 15, the following form of conviction is directed to be used:

—, } Be it remembered, that on this — day of —, in the — year of the
to wit. } reign of her Majesty Queen Victoria, A. B. is convicted before me, one of
her Majesty's justices of the peace for the city of London, [or "for the city and liberty
of Westminster," or "for the county of —," as the case may be,] for that the said
A. B., on the — day of — now last past, did, contrary to the statute in that case
made and provided [here state the offence against the act]: And I do declare and
adjudge, that the said A. B. hath forfeited the sum of —, of lawful money of Great

Britain, for the offence aforesaid. Given under my hand and seal, the day and year aforesaid.

This conviction must be certified to the sessions, and is not removable by *certiorari*.

Appeal.]—By *sect. 16*, an appeal is given to the next quarter sessions, unless they happen within six days after the conviction, and in that case to the following sessions, upon entering into a recognizance, with two sureties, in the sum of 10*l.*, to try such appeal.

Disposal of Penalties.]—By *sect. 17*, one half of any penalty goes to the informer, and the other half to the poor of the parish where the offence is committed.

By *sect. 18*, there is the usual limitation as to actions for any thing done under the act.

Posts—See Fences.

Postmaster.

PENALTY on unlicensed persons letting Horses for Hire.]—By 2 & 3 Will. 4, c. 120, s. 55, the commissioners of stamps, or any collector or other officer of stamp duties duly authorized by the commissioners for that purpose, may grant to any person a licence to let horses for hire; all such licences granted between the 31st January and the 16th March to be dated on 1st February, and all those granted at any other time to be dated on the day on which the same shall be granted; and all such licences shall continue in force from the day of the date until the 31st January next ensuing, both inclusive. No person, unless he shall have obtained a proper licence, shall let any horse for hire, to be used either as a saddle-horse, or for drawing any carriage conveying any persons, or any mourning coach or hearse, under the penalty of 10*l.* for every horse.

Letting Horses at more than one place.]—By *sect. 58*, no licensed postmaster shall by virtue of any such licence be authorized to let any horse for hire at any inn, house, or place not specified in such licence, under the penalty of 20*l.*

Board to be placed in front of premises.]—By *sect. 59*, every licensed postmaster shall cause his christian name and surname, together with the words “licensed to let horses for hire,” to be painted in legible characters of at least two inches in height, and of a proper

and proportionate breadth, upon a sign or board, either hung out from, or fixed upon, some conspicuous part of the front of the house, stables, or out-offices at every inn, house, or place at which he may be so licensed, under the penalty of 5*l.* for any default.

Number and Name to be painted on Carriage.—By sect. 60, where any licensed postmaster shall keep any carriages to be furnished at the same time with any horse or horses by him let for hire by the mile, (except hearses and mourning coaches,) he must cause them to be numbered with progressive numbers, beginning with number one, and also paint in one or more straight line or lines on the outside panel of each door of every such carriage, and on some conspicuous part outwardly on each side of every such carriage which shall not have a door, the christian name and surname of such postmaster, and the name of the city, town, or place where such carriage shall be kept, in legible characters and figures of a colour different from and opposite to the colour of the ground whereon the same shall be painted, each letter to be at least one inch in height, and each figure to be at least one inch and a half in height, and each of a proportionate breadth; and such postmaster shall continue such letters and figures on every such carriage, under the penalty of 10*l.* for any default.

Postmasters and Tollgate Keepers' Tickets.—By sect. 61, the commissioners of stamps, or their officers, are to supply postmasters and tollgate keepers with proper tickets; and exchange tickets, required to be given by tollgate keepers, are to be adapted for the insertion therein of certain particulars.

Delivery of Tickets by the Postmaster.—By sect. 62, every licensed postmaster who shall let any horses for hire, shall, by himself or his servants, previous to the using of any such horse, deliver to the person hiring it, or to the postilion or person to be employed to drive it, a ticket properly filled up with respect to all the particulars mentioned in the act which shall be applicable to the hiring of such horse, under the penalty of 10*l.* for any default.

Filling up Tickets untruly.—By sect. 63, no person hiring any horse shall be compelled to pay for a greater number of miles than shall be expressed upon the ticket; and any licensed postmaster who shall insert, or cause or permit to be inserted, in any such ticket, the name of any other town or place than the town or place to which, or to and from which, the horse shall be hired to go, or to go and

return, or a less number of miles than such horse shall be actually hired to go, shall forfeit 10*l.*, and the commissioners of stamps may refuse to grant to him any such licence in future.

Delivery of Tickets at Tollgates.—By *sect. 64*, persons using hired horses must deliver the tickets at the first toll-gate, and receive check tickets. And by *sect. 65*, tollgate keepers are to demand tickets, and give check tickets in exchange; and no persons are to be permitted to pass their gates, without producing a ticket, or paying 1*s.* 9*d.* for every horse. Any tollgate keeper who shall neglect to demand, or shall refuse to receive, any ticket so directed to be delivered to him, or who shall neglect or refuse to write his name thereon, or to file the same when delivered, or who shall neglect or refuse to give any ticket in exchange, or who shall deliver any exchange ticket or check ticket, without having first received the necessary ticket required by the act, or who shall make, or suffer to be made, any alteration whatever in any ticket after the same shall have come to his possession, or who shall deliver any ticket (directed to be received and filed by him) to any person other than the person duly authorized to receive the same, or who shall permit any person to inspect any ticket by him received and filed other than the person duly authorized to receive the same, or who shall demand or receive, or shall agree to take or accept, any less sum of money than he is by this act authorized to demand and receive, and retain to his own use, shall forfeit 10*l.*

By *sect. 66*, if any person shall neglect or refuse to deliver at any tollgate any ticket, which he ought according to the provisions of the act to deliver, or shall falsely allege that any horse (with which he shall pass any tollgate) is not a hired horse, in order to avoid being stopped, or to avoid the payment of the sum which the tollgate keeper shall be entitled to demand in default of any such ticket being delivered or shown, he shall forfeit 10*l.*

By *sect. 67*, the keeper of every tollgate within the distance of five miles from the head office for stamps in the city of Westminster shall, at such times as shall be directed by the commissioners, or their proper officer, bring or send all the tickets by him received to the head office, or to such other place within the bills of mortality as the commissioners or officer shall appoint; and the keeper of every tollgate beyond the distance of five miles from the head office shall bring or send such tickets to such places and at such times as the collector shall require, provided they are not at a greater distance than the

nearest market town, or shall, upon demand, deliver all such tickets to such collector, under the penalty of 20s. for every default.

By *sect. 71*, postmasters are required to account for tickets delivered to them, and to redeliver to the collector such as remain unaccounted for, or to pay the value thereof, under the penalty of 10*l.* for neglect or refusal.

Letting Horses for twenty-eight successive days.—By *sect. 74*, whenever such licensed postmaster shall let any horse for hire for twenty-eight successive days, or more, he shall insert and set forth in his stamp office weekly account the several particulars following; (that is to say,) the number of horses so let for hire, the day of the month, the month and year, on which such hiring shall commence, the number of every carriage by the act required to be numbered, which shall be furnished therewith, the christian name and surname of every postilion or driver employed with every such horse, the time for which the same shall be hired, and the name and place of abode of the person hiring the same; and such postmaster shall also insert in every such account a memorandum or notice of every horse which shall have been let for hire by him for twenty-eight successive days, or more, and which since the date of his last account shall have been given up and returned to him by the hirer before the expiration of the time for which such horse shall have been let for hire, and the day of the month on which the same shall have been so given up and returned, and also the amount of the duty payable in respect of the time during which every such horse shall have been under the direction of the person hiring the same, under the penalty of 20*l.* for any neglect.

Entries when Horses are let or returned.—By *sect. 75*, every licensed postmaster is required to enter in his stamp office weekly account the several particulars by this act required to be inserted therein, on the day on which any horse shall be so let for hire, or so given up and returned, or on the day next immediately following; or in default, he shall forfeit 40s.

Account to be open for inspection.—By *sect. 76*, every such account shall be open for the inspection and examination of the commissioners of stamps, or any collector, or any authorized officer of stamp duties, under the penalty of 10*l.* for any refusal.

When and where Accounts to be delivered, and Duty paid.—By *sect. 77*, every licensed postmaster, residing within the distance of

five miles from the head office for stamps, shall attend and deliver his stamp office weekly accounts, and shall pay the duties for which he shall be accountable, either to the commissioners of stamps at the head office, or to some collector at such place and at such time as shall be appointed for that purpose by a notice to be given upon the blank forms of the stamp office weekly accounts, which shall from time to time be delivered to such postmaster for the purpose of making therein the entries required by the act, provided such place be not at a greater distance than two miles from the head office. And every licensed postmaster, not residing within the distance of five miles from the head office, shall attend and deliver such weekly accounts, and shall pay the duties for which he shall be accountable, to the collector authorised to receive the same, at such place in the market town in which such postmaster shall reside, or (in case he shall not reside in a market town) in the market town nearest to his place of residence, and at such time to be appointed for that purpose by a notice to be given in manner aforesaid; under the penalty of 20*l.* for every default in not attending to deliver, or in not delivering, any such account at the time and in manner aforesaid, and double the amount of the duties due and payable by such postmaster, so far as the same can be ascertained. In default of the delivery of any such account, the duties may be computed by the tickets which such postmaster shall have issued, by calculating the rate of duty upon the number of horses, and by the number of miles or days, or otherwise, as the case may be, specified or expressed upon such tickets respectively, without regard to the option of such postmaster in any case of paying one-fifth part of the sum charged for the hire of any such horses, for the duty on the letting thereof.

By *sect. 78*, postmasters are required to make a declaration of the truth of their accounts, under the penalty for refusal of 20*l.*

Recovery of Duties.—By *sect. 85*, the duties on horses let for hire, not exceeding 50*l.*, are recoverable by distress, on complaint made before a justice of the peace; and for want of sufficient distress, the defaulter may be committed to gaol, until the arrears, with the costs, are fully paid and satisfied.

Penalty for obstructing Collectors.—By *sect. 99*, inspectors and collectors may enter toll-houses to check stage carriages and horses let for hire, and to receive tickets, &c. Penalty for refusing to permit them to enter, or obstructing them in the discharge of their duty, 20*l.*

For conniving at Offences.—By *sect. 100*, if any person shall receive any sum of money, or any other consideration or reward for aiding or assisting in, or for conniving at, the commission of any offence against the act, he shall forfeit 20*l*.

For the recovery and application of penalties, and the proceedings on summary conviction, see the general provisions of the statute, under title *Stage Coaches*.

1. *Information against a Postmaster for not filling up a Ticket truly, on letting out a pair of Horses for Hire, under the 2 & 3 Will. 4, c. 120, ss. 62, 63 (m).*

County of Middlesex, } Be it remembered, that on the — day of —, in the
to wit. } year of our Lord 1843, at the Police Court, Queen Square,
in the city and liberty of Westminster, and county of Middlesex, A. B. of —, in
the county of —, an officer of Excise (*n*), [*or* “a collector or farmer of the duty
on horses let to hire,” *as the case may be,*] cometh before me J. B. esquire, one of
her Majesty’s justices of the peace for the county aforesaid, and informeth me, the
said justice, that E. O. of —, in the county aforesaid, postmaster, heretofore, within
the space of fourteen days (*o*) before the exhibiting of this information, to wit, on the
— day of —, in the year aforesaid, at Knightsbridge, in the county aforesaid,
being then and there a postmaster licensed to let horses for hire, did let for hire unto
one W. F. two horses (*p*), to go from Sloane Street in the county aforesaid to the
town of Windsor in the county of Berkshire, and back; and that he the said E. O.
did then and there falsely and fraudulently insert, and cause and permit to be in-
serted, in the ticket directed by the statute in that case made and provided to be
delivered by the said E. O. to the person hiring such horses, or to the postilion or
person to be employed to drive such horses, the name of another and different town
and place than the town to and from which the said horses were hired to go, that is to
say, the name of the town and place of Staines, in the county of Middlesex, as the
town and place to and from which the said horses were hired by the said W. F. to go
and return, contrary to the form of the statute in such case made and provided,
whereby the said E. O. hath forfeited for his said offence the sum of 10*l*.

Taken and received by me, the day }
and year first above written. }

(*m*) See *ante*, p. 980. The above form of information is given by *sect. 113*, and schedule (B) of the act, as well as the forms of the summons, conviction, warrant of distress, and warrant of commitment founded thereon, which may all therefore be filled up with the assistance of the foregoing information. And see *post*, *Stage Coaches*. *Sect. 103* directs the mode of proceeding, giving an appeal, but taking away the *certiorari*. By *sect. 106*, half the penalty goes to the Queen, and half to the informer, if he sues and prosecutes for the same within fourteen days after the offence shall have been committed. *Sect.*

105 enables the justice to mitigate the penalty, so as it be not reduced to less than one-fourth, exclusive of costs.

(*n*) By 6 & 7 Will. 4, c. 45, the collection and management of the duties on horses let to hire, and on licences relating to the same, are transferred from the commissioners of Stamps and Taxes to the commissioners of Excise.

(*o*) This allegation is material, if the informer claims any portion of the penalty.

(*p*) By *sect. 117*, the terms “horse” or “horses” shall respectively be construed to mean and include any mare or gelding, as well as any horse.

2. *Information by a private individual against a Tollgate Keeper, for refusing to receive a Ticket directed to be delivered to him, under the 2 & 3 Will. 4, c. 120, ss. 64, 65.*

Surrey, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, at the Police Court, at Union Hall, in the parish of St.
Saviour's, Southwark, in the county aforesaid, A. B. of, &c., who prosecutes as well
for our sovereign lady the Queen as for himself in this behalf, cometh before me J. T.
esquire, one of her Majesty's justices of the peace for the county aforesaid, and in-
formeth me, the said justice, that L. M. of Lambeth, in the said county of Surrey,
yeoman, within fourteen days (q) before the exhibiting of this information, that is to
say, on the — day of —, in the year aforesaid, at a certain tollgate situate and
being at Lambeth aforesaid (he the said L. M. then being a tollgate keeper there), did
wilfully refuse to receive of and from one C. D. (he the said C. D. being then and
there the person employed to drive two horses, which had been let for hire by one
G. F. to one R. S., and being then and there about to pass therewith through the said
tollgate) a certain ticket, purporting to be a note or certificate relating to the hiring
of the said horses for a period of time not exceeding three days, that is to say, for
two days, and being a ticket directed by the statute in such case made and provided
to be delivered to and received by the said L. M., so being such tollgate keeper as
aforesaid; the said tollgate being the first (r) tollgate through which the said horses
so let for hire as aforesaid passed and went after such letting for hire, and he the said
L. M. having notice of all and singular the premises aforesaid, and being duly required
by the said C. D. to receive the said ticket; contrary to the form of the statute in
such case made and provided; whereby the said L. M. hath forfeited for his said
offence the sum of 10*l.* of lawful money of Great Britain, one moiety thereof to the
use of her Majesty, and the other moiety thereof to the said A. B. who prosecutes as
aforesaid; wherefore the said A. B. prays judgment of me the said justice, and that
the said L. M. may be summoned to make his defence to the charge aforesaid, and
that I will proceed thereupon according to law.

Taken and received by me, the day }
and year first above written. }

Post Office.

POST Office Clerks, &c. stealing Letters.—By 7 Will. 4 and 1 Vict. c. 36, s. 26, every person employed under the post office, who shall steal, or shall for any purpose whatever embezzle, secrete, or destroy, a post letter, shall in *England* and *Ireland* be guilty of felony, and in *Scotland* of a high crime and offence, punishable with *transportation for seven years*, or *imprisonment not exceeding three years*; and if any such post letter shall contain therein any chattel or money whatsoever, or any valuable security, then the offender is liable to *transportation for life*.

(q) See note (n), *ante*, p. 984.

(r) See *sect. 64, ante*, p. 981.

Other Persons.—By *sect. 27*, every person who shall steal from or out of a post letter any chattel, or money, or valuable security, shall in *England* and *Ireland* be guilty of felony, and in *Scotland* of a high crime and offence, and shall be *transported for life*.

By *sect. 28*, every person who shall steal a post letter bag, or a post letter from a post letter bag, or shall steal a post letter from a post office, or from an officer of the post office, or from a mail; or shall stop a mail, with intent to rob or search the same; shall in *England* and *Ireland* be guilty of felony, and in *Scotland* of a high crime and offence, and shall be *transported for life*.

By *sect. 29*, every person who shall steal, or unlawfully take away, a post letter bag sent by a post office packet, or who shall steal or unlawfully take a letter out of any such bag, or shall unlawfully open any such bag, shall in *England* and *Ireland* be guilty of felony, and in *Scotland* of a high crime and offence, and shall be *transported for any term not exceeding fourteen years*.

Receiving stolen Letters or Property.—By *sect. 30*, every person who shall receive any post letter, or post letter bag, or any chattel, or money, or valuable security, the stealing or taking or embezzling or secreting whereof shall amount to a felony, under the post office acts, knowing the same to have been feloniously stolen, taken, embezzled, or secreted, and to have been sent, or to have been intended to be sent by the post, shall in *England* and *Ireland* be guilty of felony, and in *Scotland* of a high crime and offence; and may be indicted and convicted either as an accessory after the fact, or for a substantive felony, and in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable to be *transported for life*.

Forging Name of Receiver-General.—By *sect. 33*, forging the name or handwriting of the receiver-general of the post-office is declared to be a felony, punishable with *transportation for life*. And see *ante*, *Forgery*, p. 330.

Accessories.—By *sect. 35*, in the case of every felony punishable under the post office acts, every principal in the second degree, and every accessory before the fact, are declared to be punishable in the same manner as the principal in the first degree; and every accessory after the fact (except only a receiver of any property or thing stolen, taken, embezzled, or secreted) is liable to be *imprisoned not exceeding two years*; and every person, who shall aid, abet, counsel,

or procure the commission of any misdemeanor punishable under the post office acts, is liable to be indicted and punished as a principal offender.

Opening or detaining Letters.—By *sect. 25*, every person employed by or under the post office, who shall, contrary to his duty, open, or procure or suffer to be opened, a post letter, or shall wilfully detain or delay, or procure or suffer to be detained or delayed, a post letter, shall in *England and Ireland* be guilty of a misdemeanor, and in *Scotland* of a crime and offence, punishable with *fine, or imprisonment, or both*.

Secreting or detaining lost Letters, &c.—By *sect. 31*, reciting that post letters are sometimes by mistake delivered to the wrong person, and post letters and post letter bags are lost in the course of conveyance or delivery thereof, and are detained by the finders in expectation of gain or reward, it is declared that every person who shall fraudulently retain, or shall wilfully secrete, or keep or detain, or, being required to deliver it up by an officer of the post office, shall neglect or refuse to deliver up a post letter which ought to have been delivered to any other person, or a post letter bag, or post letter, which shall have been *sent (s)*, whether the same shall have been found by the person secreted, keeping, or detaining, or neglecting or refusing to deliver up the same, or by any other person, shall in *England and Ireland* be guilty of a misdemeanor, and in *Scotland* of a crime and offence, punishable with *fine and imprisonment*.

Illegal Solicitations.—By *sect. 36*, every person who shall solicit, or endeavour to procure, any other person to commit a felony or misdemeanor punishable by the post office acts, shall in *England and Ireland* be guilty of a misdemeanor, and in *Scotland* of a crime and offence, punishable with *imprisonment not exceeding two years*.

Discretion as to term of Transportation.—By *sect. 41*, every person convicted of any offence, for which the punishment of transportation for life is awarded, may be transported either *for life*, or for any term *not less than seven years*; or may be *imprisoned* for any term *not exceeding four years*; and every person convicted of any offence, punishable according to the post office acts by transportation for fourteen years, is liable to be transported for any term *not exceeding fourteen years, nor less than seven years*; or to be *imprisoned not exceeding three years*.

(s) *Quære*, whether this word ought not to have been "*lost*,"

Conveying Letters otherwise than by the Post.]—By sect. 2, for preventing any breach of the privilege conferred by the post office acts on the postmaster-general for the benefit of the public revenue, it is declared, that every person, who shall convey otherwise than by post a letter not exempted from the exclusive privilege of the postmaster-general, shall for every letter forfeit 5*l*. Every person, who shall be in the practice of so conveying letters not so exempted, shall, for every week during which the practice shall be continued, forfeit 100*l*. Every person, who shall perform otherwise than by the post any services incidental to conveying letters from place to place, whether by receiving or by taking up or by collecting, or by ordering or by dispatching, or by carrying or by re-carrying, or by delivering a letter not exempted from the exclusive privilege of the postmaster-general, shall forfeit for every letter 5*l*. Every person, who shall be in the practice of so performing any such incidental services, shall, for every week during which the practice shall be continued, forfeit 100*l*. Every person, who shall send a letter, not exempted from the exclusive privilege of the postmaster general, otherwise than by post, or shall cause a letter not so exempted to be so sent or conveyed, or shall either tender or deliver a letter not so exempt, in order to be sent otherwise than by post, shall forfeit for every letter 5*l*.; and every person who shall be in the practice of committing any of the acts last mentioned, shall for every week during which the practice shall be continued, forfeit 100*l*. Every person, who shall make a collection of exempted letters, for the purpose of conveying or sending them otherwise than by the post, or by the post, shall forfeit for every letter 5*l*.; and every person, who shall be in the practice of making a collection of exempted letters for either of those purposes, shall forfeit for every week during which the practice shall be continued, 100*l*. The term “post” is declared to include all post communications by land or by water (except by outward-bound vessels not being employed by or under the Post Office or the Admiralty to carry post letters); and the above penalties are incurred, whether the letter shall be sent singly, or with any thing else, or such incidental service shall be performed in respect to a letter either sent or to be sent singly, or together with some other letter or thing; and in every prosecution for the recovery of any such penalty, the *onus* shall lie upon the party prosecuted to prove that the act, in respect of which the penalty is alleged to have been incurred, was done in conformity to the post office laws.

Retaining Ship Letters.]—By sect. 3, every person, being either

the master of a vessel inward-bound, or one of the officers, or one of the crew, or a passenger thereof, who shall knowingly have any letter in his possession not exempted from the privilege of the postmaster-general, after the master shall have sent any part of his ship's letters to the post office, shall forfeit for every letter 5*l.*; and whether the letter be in the baggage, or on the person of the offender, or otherwise in his custody, it shall be held to be in his possession; and every such person, who shall detain any such letter after demand made, either by the officer of the customs, or by a person authorized by the postmaster-general to demand ship's letters, shall forfeit for every letter 10*l.*

Abusing privilege as to Newspapers.—By sect. 5, for the prevention of the abuse of the privilege of sending newspapers free by the post or at a reduced rate, every person who shall inclose, or cause or procure to be inclosed, in a newspaper to be sent by the post, or under the cover thereof, any letter or paper, or thing; and every person, who shall print, or cause to be printed, any words or communication, either upon any such newspaper, after the same shall have been published, or upon the cover thereof, or who shall put, or cause to be put, any writing or marks either upon the newspaper, or upon the cover thereof, other than the name and address of the person to whom it shall be sent; and every person, who shall knowingly either send, or cause to be sent, by the post, or who shall either deliver, or tender, in order to be sent by the post, a newspaper in respect of which any one of the offences before mentioned shall have been committed; shall for every such offence forfeit *treble the duty of postage* computed by weight and by distance, as if the paper in respect of which the offence was committed were a letter; such postage to be recoverable as postages not exceeding in amount 20*l.* are recoverable; or he shall, except in those cases in which the newspaper or cover shall only have marks thereon and not writing, at the option of the postmaster-general, be prosecuted as for a misdemeanor, and shall suffer punishment accordingly.

Offences committed by Masters of Ships.—By sect. 6, for compelling the observance of the provisions of the post office laws relating to the conveyance of ship letters, every master of a vessel outward-bound to *Ceylon*, the *Mauritius*, the *East Indies*, or the *Cape of Good Hope*, who shall refuse to take a post letter bag delivered or tendered to him by an officer of the post office for conveyance, shall forfeit 200*l.*; which penalty is (by 3 & 4 Vict. c. 96,

s. 37) extended to the master of *every vessel outward-bound*. Every master of a vessel, who shall open a sealed letter bag, with which he shall be intrusted for conveyance; or shall take out of a letter bag, with which he shall have been intrusted for conveyance, a letter, or any other thing; or shall not duly deliver a letter bag, with the contents, at the Post Office, on his arrival in port, without wilful or unavoidable delay after his arrival; is in either of these cases liable to a penalty of 20*l*. Every person, to whom letters may have been intrusted by the master of a vessel to bring on shore, who shall break the seal, or in any manner wilfully open the same, shall forfeit 20*l*. Every master of a vessel, who shall refuse or wilfully neglect to make a declaration of having delivered his ship's letters to the post office, shall forfeit 50*l*.; which penalty is, by 3 & 4 Vict. c. 96, s. 37, extended to the master of every vessel who shall refuse or wilfully neglect to make the declaration required by the last-mentioned act. Every collector, comptroller, or officer of the customs, required by law to prohibit any vessel reporting until certain requisites shall have been complied with, who shall permit such vessel to report before such requisites shall have been complied with, shall forfeit 50*l*.; which last penalty is by 3 & 4 Vict. c. 96, s. 37, extended to every such officer who neglects the requisitions in this respect of such last-mentioned act. Every master of a vessel, (not having been able to send his letters ashore, previous to his arrival at the port where the vessel is to report,) who shall break bulk, or make entry, before all letters on board shall be sent to the post office, shall forfeit 20*l*. And every master of a vessel, or any other person on board any ship, liable to the performance of quarantine, who shall neglect or refuse to deliver to the person or persons appointed to superintend the quarantine, all letters in his possession, shall forfeit 20*l*.

Carelessness or Misconduct of persons having charge of Letters.] —By sect. 7, reciting that post letter bags and post letters are sometimes lost or delayed by the carelessness or other misconduct of the persons having charge of the same, it is enacted that every person employed to convey or deliver a post letter bag, or a post letter, who shall whilst so employed, or whilst the same shall be in his custody, care, or possession, leave a post letter bag or a post letter, or suffer any person, not being the guard or person employed for that purpose, to ride in the place appointed for the guard, in or upon any carriage used for the conveyance of a post letter bag or post letter, or to ride in or upon a carriage so used and not licensed to carry pas-

sengers, or upon a horse used for the conveyance on horseback of a post letter bag or a post letter ; or if any such person shall be guilty of any act of drunkenness, or of carelessness, negligence, or other misconduct, whereby the safety of a post letter bag, or a post letter shall be endangered ; or who shall collect or receive, or convey or deliver, a letter, otherwise than in the ordinary course of the post ; or who shall give any false information of any assault or attempt at robbery upon him ; or who shall loiter on the road or passage, or wilfully mis-spend his time, so as to retard or delay the progress or arrival of a post letter bag or post letter ; or who shall not use due and proper care and diligence safely to convey a post letter bag or a post letter at the rate of speed appointed by and according to the regulations of the post office for the time being ; is liable to a penalty of 20*l*.

Hackney Coaches plying, or persons loitering, opposite the Post Office.—By *sect. 8*, to prevent obstructions opposite the General Post Office, it is enacted that no hackney carriage shall stand or ply for hire opposite the General Post Office, or any part thereof respectively ; and every driver, or any person having the management of such carriage, who shall permit the same to stand or ply for hire opposite the post office, shall forfeit for every such offence, 5*l*. And for the purposes of this provision, every carriage with two or more wheels, whatever may be the form or construction of such carriage, or the number of persons which the same shall be calculated to convey, or the number of horses by which the same shall be drawn, shall be a hackney carriage within the meaning of the act. Every hawker, newsvender, or idle or disorderly person, who shall stop or loiter on the flagway or pavement opposite the General Post Office, or any part thereof respectively, shall forfeit for every such offence 5*l*.

Tollgate Keepers, &c. stopping the Mail.—By *sect. 9*, every toll-collector or receiver, or other person employed to receive the tolls or rates at a turnpike gate or bar erected upon a highway, bridge, or post road, and every person who shall have the care of a gate of a walled town, or the custody of the keys of such gate, who shall demand toll for any person, or horse, or carriage going for or conveying, or employed to go for or carry, a mail, or who shall not permit the mail to pass without delay, or who shall wilfully delay or obstruct the mail at or in passing a turnpike gate or bar, or a gate of a walled town, shall for every such offence forfeit 5*l*. And every

ferryman, or other person employed to receive the tolls or rates at a ferry, who shall demand any such toll for any such person, horse, or carriage, or who shall not within the space of fifteen minutes after demand made, convey the mail (if it be possible or safe to do so) across such ferry to the usual landing place, shall for every such offence forfeit 5*l*.

Abettors of Offences.—By *sect. 11*, every person who shall aid, abet, or counsel, or procure the commission of an offence, which is by the post office acts punishable on summary conviction, shall, on conviction before a justice of the peace, be liable to the same forfeiture and punishment as a principal offender.

Recovery of Penalties.—By *sect. 12*, all pecuniary penalties imposed by the post office acts may be sued for and recovered with full costs of suit, by any person who shall inform and sue for the same, in any of the courts of record at Westminster, either by action of debt, or by bill, or plaint, or information.

And by *sect. 13*, any justice of the peace having jurisdiction where the offence shall be committed, may hear and determine any offence against the post office acts, which may subject the offender to a pecuniary penalty not exceeding 20*l*.; and such justice shall, upon information given, or complaint made before him, summon the party accused, and also the witnesses on either side, to be and appear before him, or before any other justice of the peace; and either on the appearance of the party accused, or in default thereof, the justice may proceed to examine into the matter of fact, and upon due proof thereof by oath of one witness, may give judgment for the complainant or defendant, and if for the complainant he may issue his warrant for the levying of the penalty, together with the costs of such proceeding, and also the costs of such warrant, and of the distress, and may cause sale to be made of the goods distrained, in case they shall not be redeemed within five days. In default of distress, the justice shall commit the offender to the common gaol or house of correction for not less than three calendar months, and not exceeding six, if the full penalty imposed by the post office acts for the offence shall amount to 20*l*., and for any time not exceeding three calendar months, if such penalty shall not amount to 20*l*., unless such penalty, and all costs and expenses, shall be sooner paid. An appeal is given to the next quarter sessions held after the expiration of ten days from the day of the conviction, of which appeal notice in writing must be given to the prosecutor or informer seven clear days previous to the

first day of the sessions; and in case the judgment of the justice shall be affirmed, the sessions may award costs against the person appealing. But the party appealing must, within five days next after the conviction, enter into a recognizance, with two sufficient sureties, before the justice, to enter and prosecute such appeal, and to pay the amount of the penalty and costs in which he shall have been convicted, and also to pay such further costs as shall be awarded, in case such conviction shall be affirmed on the hearing of the appeal. No proceedings are to be quashed for want of form, or for any error or mistake which in the judgment of the Court has not a tendency to mislead the defendant; nor to be removed by *certiorari*, or by any other writ or process into any other Court.

Power of Mitigation.—By sect. 14, the justice may mitigate the penalty, provided all reasonable costs in prosecuting for the offence shall be allowed, over and above the sum to which the penalty shall be mitigated.

Distribution of Penalties.—By sect. 15, all pecuniary penalties sued for or recovered by or in the name of any other person than the attorney-general, or the solicitor or any other officer of the post office, shall be distributed, one moiety to her Majesty, and the other moiety, with full costs of suit, to the informer; and all pecuniary penalties sued for and recovered by or in the name of the above-named officers, shall be applied to the use of her Majesty: but the postmaster-general may give all or any part of such penalties belonging to her Majesty, as rewards to any person who shall have detected the offence, or given information which may have led to the discovery thereof, or to the conviction of the offenders.

Disposal of the Penalties payable to the Queen.—By sect. 16, every justice before whom a person shall be convicted is to receive the penalty, or share of the penalty, belonging to her Majesty, and pay the same at the next quarter sessions into the hands of the clerk of the peace, town clerk, or other such officer of the place within which the conviction shall have been made, who must within fourteen days after his receipt thereof, and without fee or reward, remit the same for the use of her Majesty to the solicitor of the post office in London: and every such justice must, within one week after every such payment, transmit to such solicitor a schedule containing the name of the person so convicted, the nature of the offence and the amount of the penalty, the date of such conviction, and the sums of money which shall have been paid by virtue thereof, to:

gether with the name of the clerk of the peace or other officer to whom he shall have paid the same, under a penalty of 50*l.* imposed on the justice for any default.

Power to give Costs to a Defendant.—By sect. 17, when any person shall be summoned before a justice, on the complaint of any other person than an officer of the post office, and the information or complaint shall afterwards be withdrawn, or quashed, or dismissed, or if the defendant shall be acquitted of the offence charged against him, the justice may order and award, that the informer shall pay to the defendant such costs, and also such compensation for his loss of time, and for the time of his witnesses, if any, in attending the justice, as to such justice shall seem reasonable; and in default of immediate payment, the justice may cause the same to be levied by distress and sale, together with the costs of such distress and sale; and in default of distress, the justice may commit such person to the common gaol or house of correction not exceeding one calendar month, unless the sum so awarded, together with all costs, shall be sooner paid.

Service of Summons.—By sect. 18, a summons shall be deemed to be sufficiently served, in case either the summons, or a copy thereof, be served personally upon the party, or be left at his usual or last known place of residence,—or, if such person be a proprietor, driver, conductor, or guard of any stage carriage, then the summons or copy may be left with the book-keeper, or person for the time being acting as book-keeper, for such stage carriage in any town or place from, into, or through which such carriage shall go or be driven, nearest to the place where any such offence shall be committed.

Penalty on Constables.—By sect. 19, every constable, or other peace officer, who shall refuse or neglect to serve a summons, or execute a warrant or order granted, issued, or made by a justice of the peace, pursuant to the post office acts, shall forfeit 10*l.*

Default of Witnesses.—By sect. 20, every person summoned as a witness to give evidence before a justice, who shall neglect or refuse to appear before him at the time and place for that purpose appointed, without a reasonable excuse for such neglect or refusal to be allowed by such justice; and every person appearing, who shall refuse to be examined and give evidence; shall forfeit 10*l.*

Competency of Witnesses.—By sect. 21, upon the hearing of an

information, any officer of the post office shall be a competent witness, notwithstanding he may be the informant or complainant, or may be entitled to or expect a part of any pecuniary penalty, or any remuneration or reward, on the conviction of the offender.

Sale of Goods distrained.—By *sect. 22*, in all cases where goods distrained or otherwise seized are directed to be sold, the same shall be sold by public auction, and notice of the time and place of such sale shall be given to the owner of such goods, or left at his last known place of abode, three days at least prior to such sale. But the owner of the goods may give his consent in writing to the sale at an earlier period, or in any other manner. And if the owner shall, at any time before the sale, pay or tender to the person authorized to cause such goods to be sold, the sum which he shall be directed to levy, together with all reasonable costs and expenses incurred, then no sale of such goods or chattels shall be made.

Limitation of Prosecutions.—By *sect. 24*, all penalties, incurred by any person for offences against the post office acts, shall be sued for within the space of one year next after the penalty shall be incurred.

Venue and Accessories.—By *sect. 37*, the offence may be charged to have been committed either in the county or place where the same shall be committed, or in any county or place in which the party shall be apprehended or be in custody; and where an offence shall be committed in or upon or in respect of a mail, or upon a person engaged in the conveyance or delivery of a post letter bag or post letter, or in respect of a post letter bag or post letter, or a chattel or money or valuable security sent by the post, such offence may be charged to have been committed, as well in any county or place in which the offender shall be apprehended or be in custody, as also in any county or place, through any part whereof the mail, or the person, or the post letter bag or the post letter, or the chattel, or the money, or the valuable security sent by the post, in respect whereof the offence shall have been committed, shall have passed in due course of conveyance or delivery by the post, in the same manner as if it had been actually committed in such county or place. And in all cases where the side, or the centre, or other part of a highway, or the side, bank, centre, or other part of a river, or canal, or navigation, shall constitute the boundary of two counties, such offence may be charged to have been committed in either of the counties, through which, or adjoining to which, or by the boundary of any part of which, the mail or person

shall have passed in due course of conveyance or delivery by the post, in the same manner as if it had actually been committed in such county or place. And every accessory before, or after, the fact to any offence, if the same be a felony or a high crime, and every person aiding or abetting, or counselling or procuring, the commission of any such offence, if the same be a misdemeanor, may be dealt with as if he were a principal, and his offence be charged to have been committed in any county or place in which the principal offender may be tried.

Admiralty jurisdiction.—By sect. 39, where an offence shall be committed within the jurisdiction of the admiralty, the same shall be tried and determined in the same manner as any other offence committed within that jurisdiction.

Summary mode to recover sums not exceeding 20l.—By sect. 43, so often as any sum of money, not exceeding 20l., shall be due for postage from any person, or which shall be due for postage from any deputy, agent, or letter carrier, or any other person employed in receiving or collecting the postage of letters, or any of the post office revenue, or from the sureties of any such last-mentioned person, a complaint may be made to one justice acting for the place, who thereupon shall summon the party complained of, and the witnesses on either side, and examine into the matter of fact; and, on due proof being made of the money due from the person complained of, by the oath of one witness, the justice shall grant a warrant of distress to a peace officer of the same place for the amount of the debt, and of all costs and expenses; and if the amount shall not be paid within five days, then the goods distrained may be sold, and the surplus of the money arising by the sale be rendered to the person distrained upon. For the purpose of taking such distress, the peace officer, when either a refusal or a resistance shall be made, may break open in the daytime any place where any goods of such person shall be. In default of distress, a justice may commit such person to the prison of the place, until the debt and all expenses shall be satisfied.

Forms of Proceedings.—By sect. 45, every complaint, information, summons, conviction, warrant of distress, or commitment, may be drawn or made out according to the several forms contained in the schedule, or to the effect thereof, with such changes therein as the case shall require, and shall be good and effectual to all intents and purposes whatsoever, without stating the case or the facts or evidence in any more particular manner than is required by such forms respectively.

Forging Dies or Plates.—By 3 & 4 Vict. c. 96, s. 22, the offence of forging or fraudulently using dies or plates for expressing and denoting the rates or duties of postage, or having in possession any paper or other substance or material privately or fraudulently stamped or marked, is declared to be *felony*, punishable with *transportation for life, or not less than seven years, or imprisonment not exceeding four years, nor less than two*. And see further, title *Forgery*, ante, p. 331.

Manufacturing Paper.—By sect. 29, the manufacturing or using paper similar to that used for postage covers, is also declared to be *felony*, punishable with *transportation for seven years, or imprisonment not less than two years*.

Fraudulently removing and using Stamps, &c.—By sect. 23, if any person shall fraudulently get off or remove, or cause or procure to be gotten off or removed, from any letter or cover, or any paper or other substance or material, the stamp or impression of any die, plate, or other instrument, with intent to use, join, fix, or place such stamp or impression for, with, or upon any other letter, cover, paper, or other substance or material; or if any person shall fraudulently use, join, fix, or place, for, with, or upon any letter or cover, or any paper or other substance or material, any such stamp or impression as aforesaid, which shall have been gotten off or removed from any other letter, cover, paper, or other substance or material; or if any person shall fraudulently erase, cut, scrape, discharge, or get out of or from, or shall cause or procure to be so erased, cut, &c. any letter or cover, or any paper or other substance or material, any name, date, or other matter or thing thereon written, printed, or expressed, with intent to use any stamp or mark then impressed or being upon such letter or cover, paper or other substance or material, or that the same may be used, for the purpose of defrauding her Majesty of any of the rates or duties aforesaid; or if any person shall make, do, or practise, or be concerned in, any other fraudulent act, contrivance, or device whatever, not specially provided for by this or some other act of parliament, with intent or design to defraud her Majesty of any of the rates or duties aforesaid; every person so offending shall forfeit and pay to her Majesty the sum of 20*l.*, with full costs of suit.

By sect. 30, if any person, not lawfully authorized, and without lawful excuse (the proof whereof shall lie on the person accused), shall purchase or receive, or take or have in his custody or posses-

sion, any paper manufactured and provided by or under the directions of the commissioners of excise, or other person or persons appointed to provide the same by the commissioners of her Majesty's treasury, for the purpose of being used for postage covers, envelopes or stamps, and for receiving the impressions of the dies, plates, or other instruments provided, made, or used under the directions of the commissioners of stamps and taxes, before such paper shall have been duly stamped with such impression, and issued for public use; every such person shall for such offence be guilty of a *misdemeanor*, punishable with *imprisonment for not more than three years, nor less than six calendar months*.

1. *Information for the Recovery of a Penalty, under the 7 Will. 4 and 1 Vict. c. 36 (t).*

County of —, } Be it remembered, that on the — day of —, in the —
to wit. } of —, A. B. of, &c. [or "A. B. an officer of the post office,"
as the case may be,] cometh before me, C. D. esquire, one of her Majesty's justices of the peace in and for the said county, and informed me, the said justice, that E. F. heretofore, to wit, on the — day of —, in the year of our Lord —, at —, in the said county, did, [*here state the offence,*] contrary to the form of the statute in such case made and provided, whereby the said E. F. hath forfeited for his said offence the sum of £—.

Taken and received by me, the day }
and year first above written. }

2. *Summons on the foregoing Information.*

County of —, }
to wit. } To E. F. of, &c.

Whereas an information hath been exhibited before me, C. D., esquire, one of her Majesty's justices of the peace for the — of —, charging that you the above-named E. F., on the — day of —, at —, did, [*here state the substance of the charge,*] whereby you have forfeited the sum of —. These are therefore to require you personally to be and appear before me, the said justice, or before such other of her Majesty's justices of the peace for the said — as shall be then present, at —, on the — day of —, at the hour of —, in the — noon of the same day, then and there to answer the same information, and to make your defence thereto; and if you fail to appear accordingly, such proceeding will be taken as if you had personally appeared, and had not made any defence to the said charge. Given under my hand and seal, this — day of —.

3. *Conviction on the foregoing Information.*

County of —, } Be it remembered, that on the — day of —, at —, E. F.,
to wit. } of, &c. was duly convicted before me, J. P., esquire, one of her Majesty's justices of the peace for —, in pursuance of an act passed in the first year of the reign of her Majesty Queen Victoria, intituled 'An Act, &c. [*here set*

(t) This and the following forms are given by the statute. See *ante*, page, 996.

out the title of the act,] for that he the said E. F. on the — day of —, did, [here state the offence, as the case may happen to be,] contrary to the form of the statute in that case made and provided; for which offence, I do adjudge that the said E. F. hath forfeited the sum of —, [if the justice mitigate the penalty, then say, “ which sum of — I do hereby mitigate to the sum of —,”] over and above the sum of —, for the costs and charges of G. H. the informer, in prosecuting this conviction. Given under my hand and seal, this — day of —.

4. Warrant of Distress founded on the foregoing Conviction.

County of —, } To the constable of —, in the county of —.
to wit.

Whereas E. F., of —, has been duly convicted of a certain offence, for, [here state the offence, as in the conviction,] whereby he hath forfeited the sum of —, [and in case of mitigation, add “ which has been mitigated to the sum of —,”] over and above the reasonable costs and charges of the informer, allowed and assessed at the sum of —. Therefore I command you to levy the said sum of —, and also the said sum of —, for the costs and charges aforesaid, making together the sum of —, by distraining the goods and chattels of the said E. F.; and if, within the space of five days next after such distress taken, the said sum of —, together with the reasonable costs and charges of taking and keeping such distress, shall not be paid, then I order and direct that you shall sell and dispose of the said goods and chattels which shall be so distrained, seized, and taken as aforesaid, and shall levy and raise thereout the said sum of —, and all reasonable costs and charges of taking and keeping and selling such distress, rendering the overplus, if any, to the owner of the said goods and chattels. And you are to certify to me what you have done by virtue of this my warrant. Given under my hand and seal, this — day of —.

J. P. (L.S.)

One of her Majesty's justices of the peace,
for the said county of —.

5. Warrant of Commitment for want of a sufficient Distress, founded on the foregoing Conviction.

County of —, } To the constable of —, in the county of —, and to the
to wit. } keeper of the common gaol [or “ house of correction”] at —,
in the said county.

Whereas E. F., of —, has been duly convicted of a certain offence, for that, [here state the offence, as in the conviction,] whereby he hath forfeited the sum of —, [and in case of mitigation, “ which hath been mitigated to the sum of —,”] over and above the reasonable costs and charges of the informer, allowed and assessed at the sum of —, making together the sum of —. And whereas it has been duly made to appear to me, that no sufficient distress can be found whereon to levy the said sum of —. Therefore I command you, the constable of —, to apprehend and take the said E. F., and safely to carry him to the common gaol [or “ house of correction”] at —, in the county of —, and there deliver him to the keeper thereof, together with this warrant. And I do hereby command you, the said keeper, to receive into your custody in the said gaol, [or “ house of correction,”] him the

said E. F., and him therein safely to keep for the space of —, unless the said sum of — shall be sooner paid. Given under my hand and seal, the — day of —.

J. P. (L. S.)

One of her Majesty's justices of the peace
for the said county of —.

6. *Form of a Complaint whereon to found a Warrant of Distress, for recovery of Postage.*

County of —, } Be it remembered, that on this — day of —, in the year of
to wit. } our Lord —, at —, in the county of —, A. B., an officer
of the post office, complained to me, C. D., esquire, one of her Majesty's justices
of the peace for the said county, that the sum of — is due and owing from E. F.,
of —, to her Majesty, [or "to the said A. B.," *if the case be so*,] for the duty
of postage, which he hath refused or neglected to pay; and thereupon the said A. B.
prays of me, the said justice, that the said E. F. may be summoned to appear and
show cause, if any he have, why upon due proof being made of the sum due and
owing from him for postage as aforesaid, a warrant of distress should not be granted
for recovery thereof, pursuant to the directions of the statute in that behalf made.

Taken and received by me, the day }
and year first above written. }

7. *Summons on the foregoing Complaint.*

County of —, }
to wit. } To E. F., of —.

Whereas complaint has been made unto me, C. D., esquire, one of her Majesty's
justices of the peace in and for the said county of —, that the sum of — is due
and owing from you to her Majesty [or "to A. B., an officer of the post office," *if the
case be so*] for the duty of postage, which you have refused or neglected to pay: These
are therefore to summon you to be and appear at —, in the said county, on the
— day of —, at the time of — in the — noon of the same day, before me,
the said justice, or before such other of her Majesty's justices of the peace for the said
county, as shall be then present, in order that you may show cause, if any you have,
upon due proof being made of the said sum of money being due and owing from you
for such duty of postage as aforesaid, a warrant of distress should not be granted for
the recovery thereof, pursuant to the directions of the statute in that behalf made; and
if you fail to appear accordingly, such proceedings will be taken, as if you had
appeared, and had not shown any sufficient cause why such warrant should not be
granted. Given under my hand and seal this — day of —.

8. *Warrant of Distress founded on the foregoing Complaint.*

County of —, } To the constable of — [or "to C. D., of —," *as the case*
to wit. } *may be*].

Whereas complaint hath been made to me, J. P., esquire, one of her Majesty's
justices of the peace for the said county of —, that E. F., of —, is indebted to her
Majesty [or "to A. B., an officer of the post office," *if the case be so*], in the sum of
—, for the duty of postage, which he hath refused or neglected to pay: And
whereas the said E. F. hath been duly summoned, and due proof hath been made

on oath before me, that the sum of — is due and owing from the said E. F. for such duty of postage as aforesaid, and that he hath neglected to pay the same : Therefore I command you to distrain the said E. F. by his goods and chattels, and to levy thereon the said last mentioned sum, being the amount of such duty of postage as aforesaid, and also the further sum of — for the costs and expenses of proceeding for and obtaining this warrant, and of the proceedings incident and relating thereto, making together the sum of — : And if, within the space of five days next after the taking of such distress, the sum of —, together with the reasonable costs and charges of taking and keeping such distress, shall not be paid, then I do hereby order and direct that you shall sell and dispose of the said goods and chattels which shall be so distrained, and that you shall levy and raise thereout the sum of —, and all reasonable costs and charges of taking and keeping and selling such distress, rendering the over-plus (if any) to the owner of the said goods and chattels : And you are to certify to me what you have done by virtue of this my warrant. Given under my hand and seal this — day of —.

J. P. (L. s.)

One of her Majesty's justices of the peace
for the said county of —.

9. *Warrant of Commitment for want of sufficient Distress, founded on the foregoing Complaint.*

County of —, { To the constable of —, in the county of —, and also to the
to wit. { keeper of the common gaol [or "house of correction"] in the said
county.

Whereas complaint was made to me, J. P., esquire, one of her Majesty's justices of the peace for the county of —, that E. F., of —, was indebted to her Majesty [or "to A. B., an officer of the post office," *if the case be so*], in the sum of £—, for the duty of postage, which he hath refused or neglected to pay : And whereas the said E. F. was duly summoned, and due proof was made on oath before me, that the sum of £— was due and owing from the said E. F. for such duty of postage as aforesaid, and that he had neglected to pay the same : And whereas a warrant has been issued, directed to C. D., of —, commanding him, by distress and sale of the goods and chattels of the said E. F., to levy the said last mentioned sum, being the amount of such duty of postage so as aforesaid due and owing from the said E. F., and also the further sum of — for the costs, charges and expenses of proceeding for and obtaining the said warrant, and of the proceedings incident and relating thereto, making together the sum of £— : And it now appearing unto me by the oath of C. D., that no sufficient distress can be found whereon to levy the said duty, costs and charges [*or, in case an insufficient distress shall have been taken, "and whereas the said C. D. hath certified to me, that he hath under the said warrant levied and raised the sum of £— only, and it now appearing to me by the oath of the said C. D., that no sufficient distress can be found whereon to levy the residue of the said duty, costs and charges"*]: Therefore I command you, the said constable, to apprehend and take the said E. F., and safely to convey him to the common gaol [or "house of correction"] of the said county at —, in the said county, and there to deliver him to the keeper thereof, together with this warrant. And I do hereby command you, the said keeper, to receive into your custody in the said gaol [or "house of correction"] him the said E. F., and him therein safely to keep, until the said sum of £— [*or*

“until the sum of £——, the residue of the said duty, costs and charges, remaining after deducting the said sum of £—— so levied as aforesaid”] shall be fully paid and satisfied. Given under my hand and seal this —— day of ——.

J. P. (L. S.)

One of her Majesty's justices of the peace
for the said ——.

10. *Information against the Guard of a Mail Coach, for permitting a person to ride with him in his seat ; under 7 Will. 4 & 1 Vict. c. 36, s. 7 (u).*

Middlesex, } Be it remembered, that on the —— day of ——, in the year of our
to wit. } Lord 1843, at the Police Court in Bow Street, in the parish of St. Paul,
Covent Garden, in the county aforesaid, A. B., of, &c., gentleman, cometh before me,
J. P., esquire, one of her Majesty's justices of the peace in and for the said county of
Middlesex, and informeth me, the said justice, that E. F., of ——, in the county afore-
said, labourer, on the —— day of —— last, at Barnet, in the county aforesaid, he, the
said E. F., being then and there a person employed to convey certain post letter bags,
that were then and there conveyed and carried in and by a certain carriage and mail
coach then and there used for the conveyance of post letters from Birmingham to
London, did, whilst the same post letter bags were in his custody, care, and posses-
sion, suffer and permit a person, not being a guard or person employed for the purpose
of conveying or delivering the said post letter bags, or any of them, to ride in the
place appointed for the guard in and upon the said carriage and mail coach, contrary
to the form of the statute in such case made and provided, whereby the said E. F. hath
forfeited for his said offence the sum of 20*l*.

Taken and received by me, the day and }
year first above written. }

11. *Conviction of a Mail Coachman, under the same section, for loitering on the Road, so as to retard the Mail.*

Lancashire, } Be it remembered, that on the —— day of ——, in the year of our Lord
to wit. } 1843, at Manchester, in the county of Lancaster, E. F., of Manchester
aforesaid, coachman, was duly convicted before me, D. M., esquire, one of her
Majesty's justices of the peace in and for the said county of Lancaster, in pursuance
of an act passed in the first year of the reign of her Majesty Queen Victoria, intituled
“An Act for Consolidating the Laws relative to Offences against the Post Office of the
United Kingdom, and for regulating the judicial administration of the Post Office Laws,
and for explaining certain terms and expressions employed in those Laws,” for that
the said E. F., on the —— day of —— last, at Heaton Norris, in the county aforesaid,
being then and there the driver of the London and Manchester mail coach from Mac-
clesfield to Manchester, and being a person employed to convey divers post letter
bags in and by the said mail coach, did unlawfully and wilfully loiter on the road and
passage of the said mail coach from Heaton Norris aforesaid to Manchester aforesaid,
and did then and there wilfully mis-spend his time, so as to retard and delay the pro-
gress and arrival of the said post letter bags at Manchester aforesaid, contrary to the
form of the statute in such case made and provided ; for which offence I do adjudge

that the said E. F. has forfeited the sum of 20*l.*, but which sum of 20*l.* I do hereby mitigate to the sum of 5*l.*, over and above the sum of 15*s.* for the costs and charges of G. H., the informer, in prosecuting this conviction. Given under my hand and seal the day and year at the place first above written.

Pounding Cattle—See Impounding Cattle.

Pound Breach.

POUND breach is the offence of forcibly breaking a pound, for the purpose of rescuing cattle or goods which have been lawfully distrained and put therein. It is an indictable offence at common law; but the civil remedy given by the statute of 2 W. & M. c. 5, s. 4 is the preferable mode of proceeding, where the offender is a responsible person; for, under the provisions of that statute, the party grieved may in a special action on the case recover treble damages and costs against the offender, or against the owner of the goods, if they come to his use. If the party, however, chooses to proceed by indictment, he may lay an information before a justice of the peace in the following form, in order that he may be bound over to answer the complaint at the assizes or quarter sessions.

Information for a Rescous and Pound Breach at Common Law.

County of } The information and complaint of A. B., of —, in the said county,
 —. } taken upon oath before me, J. P., esquire, one of her Majesty's justices of
 the peace in and for the said county, the — day of —, in the year of our Lord
 1843, who says that he, the said A. B., as constable of the said parish of —, received
 a warrant under the hand and seal of me, the said justice, bearing date the — day of
 — instant, by which he, the said constable, was commanded to levy the sum of
 £— by distress and sale of the goods and chattels of C. D., late of —, in the said
 county, yeoman; the said sum of £— being double the value of certain goods of the
 said C. D., which the said C. D. was duly convicted of having fraudulently and clan-
 destinely removed and conveyed away from a certain messuage in his occupation, at
 —, in the said county, to prevent one E. F. from distraining the said goods for
 arrears of rent: And that he, the said constable, by virtue of the said warrant, on the
 — day of — instant, distrained certain articles of household furniture belonging
 to the said C. D., in a house in the parish of —, in the county aforesaid, and put a
 lock on the door of the room wherein the said articles so distrained were deposited;
 but that the said lock was yesterday wilfully broken by G. H., of —, in the said
 county, labourer, and that the said articles so distrained were rescued by the said
 G. H., in breach of the peace and to the delaying of justice: Wherefore the said
 A. B. prays that the said G. H. may be summoned to answer this information, and to
 be further dealt with according to law.

Taken before me,

J. P.

A. B.

Preaching unlawfully—See **Dissenters**.

Principals in the Second Degree.

PRINCIPALS in the second degree are those who are present, aiding, or assisting in the commission of the offence; but they need not be actually and visibly present; for if they accompany the principal to commit the crime, and keep within hearing, or upon watch, ready to assist, if called upon, to prevent a surprise, or to favour (if need be) the escape of those who are more immediately engaged—they are all, if the fact be committed, legally *present* at it (*v*).

And see further, **Accessories**.

Printers.

And see **Newspapers**.

PENALTY for not taking out a *Certificate*.]—By the 39 Geo. 3, c. 79, s. 23, every person, having any printing press or types for printing, must cause a notice thereof attested by one witness to be delivered to the clerk of the peace of the county or place where the same shall be intended to be used, according to the form prescribed in the schedule of the act; and the clerk of the peace is required to grant a certificate in the form prescribed in the schedule, for which he is to receive the fee of 1s., and no more; he is then to file the notice, and transmit an attested copy thereof to the secretary of state. Every person, who, not having delivered such notice and obtained such certificate, shall keep or use any printing press or types for printing; or, having delivered such notice and obtained such certificate, shall use any printing press or types for printing in any other place than the place expressed in such notice; shall forfeit the sum of 20*l*.

By *sect. 24*, the act is not to extend to her Majesty's printers, or to the public presses of the universities of Oxford and Cambridge.

Penalty on Letter Founders and sellers of Types.]—By *sect. 25*, every person carrying on the business of a letter founder, or maker or seller of types for printing, or of printing presses, must also cause notice of his intention to carry on such business to be in like manner delivered to the clerk of the peace, who is required to grant him a certificate, upon receiving the fee of 1s., and to file the notice and

transmit an attested copy thereof to the secretary of state. Every person, who shall carry on such business, or make or sell any type for printing, or printing press, without having given such notice and obtained such certificate, shall forfeit the sum of 20*l*.

By *sect. 26*, every person, who shall sell types for printing, or printing presses, must keep a fair account in writing of all persons to whom any such types or presses shall be sold, and produce such accounts to any justice of the peace who shall require the same, under the like penalty of 20*l*.

Printers to keep the names and address of their employers.—By *sect. 29*, every person, who shall print any paper for hire, reward, gain, or profit, must carefully preserve and keep one copy (at least) of every paper so printed by him, on which he must cause to be written or printed, in fair and legible characters, the name and place of abode of the person by whom he is employed to print the same. If he omits to do so, or does not keep the printed paper for the space of six calendar months next after the printing thereof, or fails to produce and show the same to any justice of the peace, who, within the space of six calendar months, shall require to see the same, he incurs the like penalty of 20*l*.

Power to apprehend Offenders.—By *sect. 30*, any person, to whom, or in whose presence, any printed paper not having the name and place of abode of any person printed thereon in manner before directed, or having a fictitious or false name or place of abode printed thereon, shall be sold or offered for sale, or shall be delivered gratis, or offered so to be, or shall be pasted, fixed, or left in any public place, or in any other manner exposed to public view, may seize and detain the person so selling, or offering to sell, or delivering, or offering to deliver, or pasting, fixing, or leaving in any public place, or in any other manner exposed to public view, any such printed paper, and forthwith convey him before some justice of the peace, or deliver him to some constable or other peace officer for that purpose, to the intent that such justice may hear and determine whether such person hath been guilty of any offence against the act.

Exemptions.—By *sect. 31*, the impression of any engraving, or the printing by letterpress of the name, or address, or business, or profession of any person, and the articles in which he deals, or any paper for the sale of estates of goods by auction, or otherwise, are cases excepted out of the act.

Power of Justices to issue Search Warrants.—By sect. 33, if any justice of the peace shall, from information upon oath, have reason to suspect that any printing press, or types for printing, are used, or kept for use, without notice given and certificate obtained as required by the act, or in any place not included in such notice and certificate, he may, by warrant under his hand and seal, direct any constable, or other peace officer, in the day time, with such persons as shall be called to his assistance, to enter into any house, room, and place, and search for any printing press or types for printing; and such peace officer, with such assistance, may accordingly enter therein, and seize, take, and carry away every printing press found therein, together with all the types and other articles thereto belonging and used in printing, and all printed papers found in such house, room, or place.

Limitation of Prosecutions.—By sect. 34, no person shall be prosecuted or sued for any penalty, unless within three calendar months after such penalty shall have been incurred.

Recovery of Penalties.—By sect. 35, any pecuniary penalty, not exceeding the sum of 20*l.*, for the recovery whereof no provision is contained in the act, may be recovered before any justice of the peace for the county or place in which the same shall be incurred, or the person having incurred the same shall happen to be, in a summary way; and if not forthwith paid, the justice may order the same to be levied by distress, together with costs; and in default of distress, he may commit the offender to the common gaol or house of correction, for any time not exceeding six calendar months, nor less than three.

By sect. 36, all penalties are to be applied, one moiety to the informer, and the other moiety to the crown.

By sect. 37, there is the usual provision as to actions against persons for anything done under the act; and sect. 38, gives the forms of convictions, &c.

Printing and Publishing Papers without Name and Address.—By 2 & 3 Vict. c. 12, s. 2, every person, who shall print any paper or book whatsoever, which shall be meant to be published or dispersed, and who shall not print upon the front of every such paper, if the same shall be printed upon one side only, or upon the first or last leaf of every paper or book, which shall consist of more than one leaf, in legible characters, his or her name and usual place of abode or business; and every person, who shall publish or disperse,

or assist in publishing or dispersing, any printed paper or book, on which the name and place of abode of the person printing the same shall not be so printed; shall for every copy of such paper so printed by him forfeit not more than 5*l*.

But by *sect. 4*, prosecutions can only be commenced in the name of the attorney or solicitor-general; and (by *sect. 6*) the former act and this act are to be construed as one act.

1. *Conviction for having or using a Printing Press or Types for printing, without notice, or using the same in a place not specified in such notice, or not keeping accounts as required by the 39 Geo. 3, c. 79, ss. 23, 26 (x).*

—, } Be it remembered, that on this — day of —, in the — year of
to wit. } the reign of —, A. B., of —, is duly convicted before me [or “us”],
— of her Majesty’s justices of the peace for —, in pursuance of an act of the 39th
year of the reign of King George the Third [*set forth the title of the act*], for that the
said A. B. on the — day of —, at —, did, contrary to the said act, keep [or
“use,” *as the case may be*] a printing press [or “types for printing;” or “did carry on
the business of a letter foundry,” or “maker,” or “seller of types,” or “printing
presses”], not having given such notice or obtained such certificate as by the said act
is required [or “in —, being a place not specified in any notice given by the said
A. B. in pursuance of the said act, whereupon he had obtained such certificate as by
the said act is required;” or “did not keep an account of a person to whom the said
A. B. sold printing types,” or “a printing press,” *as the case may be*; or “did not
print his name, &c.” *as the case may require*; or “did not keep a copy of a paper
printed by him for hire, reward, gain, or profit, to wit, a paper [*describing it*], which
the said A. B. printed, &c.,” or “did not produce a copy of a paper printed, &c.”]
Wherefore I [or “we”], the said —, do adjudge, that he the said A. B. do pay the
sum of —, as a penalty for his offence, in pursuance of the said act. Given under
our hands and seals this — day of —, in the year of our Lord —, and in the
— year of the reign, &c.

2. *Notice to the Clerk of the Peace that a person keeps a Printing Press or Types for printing.*

To the clerk of the peace for — [*here insert the county, stewardry, riding, division, city, borough, town, or place*], or his deputy.

I, A. B., of —, do hereby declare, that I have a printing press and types for printing, which I propose to use for printing within — [*as the case may require*], and which I require to be entered for that purpose, in pursuance of an act passed in the 39th year of the reign of King George the Third [*set forth the title of the act*].

Witness my hand this — day of —.

Signed, in the presence }
of }

3. *Certificate that Notice has been given of a Printing Press or Types for Printing.*

I —, clerk [or “deputy clerk”] of the peace for —, do hereby certify, that A. B. of — hath delivered to me a notice in writing, appearing to be signed by him,

and attested by C. D. as a witness to his signing the same, that he the said A. B. hath a printing press and types for printing, which he proposes to use for printing, within —, and which he has required to be entered, pursuant to an act passed in the thirty-ninth year of &c. [set forth the title of the act].

Witness my hand, this — day of —.

Notice to the Clerk of the Peace, that a person carries on the business of a Letter Founder, or maker or seller of Types for Printing, or of Printing Presses.

To the clerk of the peace for [as the case may be], or his deputy.

I, A. B. of —, do hereby declare, that I intend to carry on the business of a letter founder [or “maker or seller of types for printing,” or “of printing presses,” as the case may be] at —, and I hereby require this notice to be entered, in pursuance of an act passed in the thirty-ninth year of the reign of King George the Third [set forth the title of the act].

Signed in the presence }
of }

5. Certificate that the above Notice has been given.

I, G. H. clerk [or “deputy clerk”] of the peace for [as the case may be], do hereby certify, that A. B. of — hath delivered to me a notice in writing, appearing to be signed by him, and attested by L. F. as a witness to his signing the same, that he intends to carry on the business of a letter founder [or “maker or seller of types for printing,” or “of printing presses”] at —, and which notice he has required to be entered, in pursuance of an act of the thirty-ninth year of King George the Third [set forth the title of the act].

Witness my hand, this — day of —.

Prisons.

And see Gaol.

ADDITIONAL County Gaols.]—By 5 & 6 Vict. c. 98, for amending the laws concerning prisons, it is provided by sect. 11, that if it shall be expressly presented that one common gaol is insufficient for any county, riding, parts, or division of a county, the justices of such county, &c., by order made for that purpose, may provide and maintain two or more common gaols; and all laws in force with respect to one common gaol shall be enforced with respect to any additional gaols; and the sheriff may appoint and remove the keeper of any such additional gaol.

Borough Gaols, and Prisoners.]—By sect. 15, in every borough, to which a separate court of sessions of the peace is granted, there shall be one common gaol, and at least one house of correction, except when the corporation have contracted with the county, or some other borough having a gaol or house of correction, for the maintenance of

their prisoners; in which case (by *sect. 18*) the expense of the borough prisoners in the county prison is to be paid by the borough; and (by *sect. 19*) the expense of the prosecution of such prisoners is to be defrayed by the borough, according to the directions of the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, s. 113. By *sect. 20* and *21*, the expense of the conveyance and transport of such prisoners is to be paid out of the borough rate; and the borough is to be freed from contributing to the county rate, in respect of all the above mentioned expenses.

Penalty for assaulting Prison Officers.—By *sect. 25*, every person, who shall assault or violently resist any officer of a prison in the execution of his duty, or who shall aid or incite any person so to assault or resist any such officer, is liable, on conviction before two justices of the peace, to a penalty of not more than 5*l.*, to be levied by distress, or to imprisonment, with or without hard labour, for not more than one calendar month; or, if the offender be already under sentence of imprisonment, then he may be imprisoned, with or without hard labour, for not more than six calendar months, in addition to the term of his previous imprisonment.

District Prisons.—By the 5 & 6 Vict. c. 53, s. 1, for encouraging the establishment of district courts and prisons, the justices of any county, and of any borough within the provisions of the Municipal Corporation Act (5 & 6 Will. 4, c. 76 (*x*)) may agree with the justices of any other county, or borough, for building or enlarging prisons to be used as district prisons; to which all the provisions of the 5 Geo. 4, c. 85, and 6 & 7 Will. 4, c. 105 (*y*) are to extend.

Visiting Justices.—By *sect. 22*, the committee of justices (appointed under *sect. 4, 5*) at some court of general sessions, once at least in every quarter of a year, are to nominate for each of the contracting parties one justice acting for any county, or borough, to be visitors of such prison.

By 5 & 6 Vict. c. 29, a new prison is established at Pentonville for the imprisonment of convicted felons, which is to be under the management of commissioners appointed by her Majesty.

By 5 & 6 Vict. c. 22, the Queen's Bench, Fleet, and Marshalsea prisons are consolidated, and the Queen's Bench prison is in future to be called the *Queen's Prison*.

(*x*) See *ante*, p. 203.

(*y*) See *ante*, p. 380.

Prison Breaking.

And see *Escape*.

THE offence of *breaking prison*, when a party is lawfully committed for *felony*, is at common law also a felony; and when lawfully confined on any inferior charge, it amounts to a *misdemeanor*, punishable by fine and imprisonment. There are likewise some statutes relating to particular prisons, in which the offence of breaking prison is made the subject of special enactment; as, for instance, the 59 Geo. 3, c. 11, for regulating the Penitentiary at Milbank, which imposes for the offence an additional imprisonment of three years, and for the attempt to break prison a further imprisonment of six calendar months (z).

Process—See *Commitment*, *Summons*, *Search Warrant*, *Warrant*.

Prostitute.

BY the 5 Geo. 4, c. 83, s. 3, (the Vagrant Act,) every common prostitute wandering in the public streets or highways, or in any place of public resort, and behaving in a riotous or indecent manner, is declared to be an idle and disorderly person, within the intent and meaning of that act; and, upon conviction before a justice of the peace, on the oath of one witness, may be committed to the house of correction to hard labour, for not more than one calendar month. And see *post*, *Vagrant*.

Public Houses—See *Alcoholouses*, *Beer Shops*.

Quarantine.

PERSONS *escaping from Vessels under Quarantine*.]—By 6 Geo. 4, c. 78, s. 19, any constable, or other peace officer, or any other person, may seize and apprehend any person that shall, contrary to the provisions of that act, have quitted or come on shore from any vessel liable to perform *quarantine*, or who shall have escaped from or quitted any vessel under *quarantine*, or from any lazaret, vessel, or place appointed in that behalf, for the purpose of carrying such person before any justice of the peace, who may grant his warrant

(z) See further, 2 Deac. Crim. Law, 1056.

for the apprehending and conveying of any such person to the vessel from which he or she shall have come on shore, or to any vessel performing quarantine, or lazaret, from which he or she shall have escaped, or for the confining of any such person in any such place of safe custody (not being a public gaol), and under such restrictions as to having any communication with any other persons, as may in the discretion of the justice (calling to his aid if he shall see fit, any medical person) appear to be proper, until such person can be safely and securely conveyed to some place appointed for the performance of quarantine, or until directions can be obtained from the privy council as to the disposal of any such person; and he may make any further order, or grant any further warrant, that may be necessary in that behalf.

Forging Certificates.—By *sect. 25*, if any person shall knowingly or wilfully forge or counterfeit, interline, erase, or alter, or procure to be forged, &c., any certificate directed or required to be granted by any order of the King in council then in force or thereafter to be made touching *quarantine*, or shall publish any such forged or counterfeited, interlined, or erased or altered certificate, knowing the same to be forged, &c., or shall knowingly and wilfully utter and publish any such certificate, with intent to obtain the effect of a true certificate to be given thereto, knowing the contents of such certificate to be false, he or she shall be guilty of *Felony*.

Jurisdiction of Justices of the Peace.—By *sect. 35*, all offences committed against any of the provisions of the act, *for which no specific penalty, forfeiture, or punishment is therein provided*, may be tried, heard, and determined before any three justices of the peace of the county, city, or place where the offence shall happen; and if any person shall be convicted of any such offence or disobedience, he or she shall be liable to a penalty, not exceeding 500*l.*, or to imprisonment not exceeding twelve months; two-thirds of which penalty are to be paid to the person suing for the same, and the remainder to the crown.

Queen—For offences against her person, see *post*, *Treason*.*

Rabbit Warrens.

BY 7 & 8 Geo. 4, c. 29, s. 30, if any person shall unlawfully and wilfully, *in the night time*, take or kill any hare or coney in any

warren or ground lawfully used for the breeding or keeping of hares or conies, whether the same be inclosed or not; *misdemeanor. Imprisonment at the discretion of the Court, with or without hard labour, and solitary confinement, by sect. 4.*

And if any person shall commit the same offence in the *day time*, or shall at any time set or use therein any snare or engine for the taking of hares or conies, he is liable to a *penalty not exceeding 5l.*, on conviction before one justice.

But nothing is to prevent any person taking or killing in the day time any conies on any *sea bank*, or *river bank*, in the county of Lincoln, so far as the tide shall extend, or within one furlong of such bank.

For the proceedings on summary conviction, see *ante*, *Deer*, and see further, *Gant*, *ante*, p. 359.

Rails—See Fences.

Railways.

WHERE a Railroad crosses a Highway.]—By 2 & 3 Vict. c. 45, wherever a railroad crosses, or shall hereafter cross, any turnpike road, or any highway, or statute labour road for carts or carriages, the railroad company are required to make and maintain good and sufficient gates across each end of such turnpike or other road, at each of such crossings, and to employ good and proper persons to open and shut such gates, so that the persons, carts, or carriages passing along the turnpike road or highway shall not be exposed to any danger or damage by the passing of any carriages or engines along the railroad. Any complaint for any neglect in respect of the said gates must be made within one calendar month after such neglect to any justice of the peace, who may summon the party so complained against to appear at the next petty sessions, to be holden for the district or division in which such gates are situate; and the justices there shall hear and decide upon the said complaint. And the proprietor, or director, of the company so offending shall, for each and every day of such neglect, forfeit any sum not exceeding five pounds, together with such costs as the justices shall award.

But by 5 & 6 Vict. c. 55, s. 9, after reciting that experience has shown that it is more conducive to safety that such gates should be kept closed across the turnpike road or highway, instead of across the railway, it is enacted accordingly, that such gates shall be kept

constantly closed across each end of such turnpike, or other road, in lieu of across the railway, except during the time when horses, cattle, carts, or carriages passing along the road shall have to cross the railway. The gates must be of such dimensions and so constructed, as, when closed across the ends of the road, to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway while the gates are closed. But the Board of Trade may, in any case where they are satisfied that it will be more conducive for the public safety, that the gates of any level crossing over the road should be kept closed across the railway, order such gates to be kept so closed, instead of across the road.

Returns required of the aggregate Traffic.—By 3 & 4 Vict. c. 97, s. 3, the Board of Trade may order every railway company to make up and deliver to them returns of the aggregate traffic in passengers, according to the several classes, and of the aggregate traffic in cattle and goods respectively on the railway, as well as of all accidents which shall have occurred thereon attended with personal injury, and also a table of all tolls, rates, and charges from time to time levied on each class passengers, and on cattle and goods; and if such returns shall not be delivered within thirty days after the same shall have been required, the company are liable to a penalty of 20*l.* for every day during which they shall wilfully neglect to deliver the same; such penalty to be recovered in any Court of Record, and to go to the crown.

By *sect. 4*, every officer of any company, who shall wilfully make any false return to the Board of Trade, shall be deemed guilty of a *misdemeanor*.

Appointment of Inspectors.—By *sect. 6*, the Board of Trade may appoint persons to inspect railways, and to examine the stations, works, and buildings, and the engines and carriages belonging thereto; but no person can be an inspector, who has within one year been a director, or held any office under the company.

Penalty on persons obstructing them.—By *sect. 6*, every person wilfully obstructing any such inspector in the execution of his duty shall, on conviction before a justice of the peace having jurisdiction in the place where the offence shall have been committed, forfeit and pay for every such offence not exceeding 10*l.*; and, on default of payment, may be committed to prison not exceeding three calendar months.

Bye Laws.—By *sect. 7*, copies of all existing bye laws are required to be laid before the Board of Trade, otherwise they are declared to be void. And by *sect. 8*, no future bye laws are to be valid, till two calendar months after they have been laid before the Board of Trade, who are empowered (by *sect. 9*) to disallow any bye laws. And by *sect. 10*, the provisions of any railway acts requiring the confirmation of bye laws by a justice of the peace, or other person, are repealed.

Prosecutions against Railway Companies.—By *sect. 11*, the Board of Trade may direct prosecutions against any company, in the name of the attorney-general, to enforce the provisions of any railway act. But twenty-one days previous notice must be given to the company. And by *sect. 12*, all prosecutions against railway companies must be under the sanction of the Board of Trade, and within one year after the offence.

By *sect. 14*, the justice may, in prosecutions against the servants (*a*) of a company, instead of deciding upon the complaint summarily, commit the party for trial at the quarter sessions for the county or place wherein such offence shall have been committed, and order him to be detained in any gaol or house of correction in the meantime, or take bail for his appearance, with or without sureties. If the offender is convicted at the quarter sessions, he is liable to be imprisoned, with or without hard labour, not exceeding two years.

Persons obstructing Railways or Officers.—By *sect. 15*, every person who shall wilfully do, or cause to be done, anything in such manner as to obstruct any engine or carriage using any railway, or to endanger the safety of persons conveyed in or upon the same, or shall aid or assist therein, shall be guilty of a *misdemeanor*, and be liable to be imprisoned, with or without hard labour, for any term not exceeding two years.

By *sect. 16*, if any person shall wilfully obstruct or impede any officer or agent of any railway company in the execution of his duty upon any railway, or upon or in any of the stations or other works or premises connected therewith; or if any person shall wilfully trespass upon any railway, or any of the stations, or other such works or premises, and shall refuse to quit the same upon request to him made by any officer or agent of the company; every such person so offending, and all others aiding or assisting therein, may be seized and detained by any such officer or agent, or any person whom he

(a) See *post*, p. 1018.

may call to his assistance, until such offender or offenders can be conveniently taken before some justice of the peace for the county or place wherein such offence shall be committed, and, when convicted before such justice, is liable to forfeit to her Majesty not exceeding 5*l.* ; and in default of payment, to be imprisoned not exceeding two calendar months.

No Certiorari, &c.—By *sect. 17*, no proceeding shall be quashed or vacated for want of form, or be removed by *certiorari*, or by any other writ or process whatsoever, into any of her Majesty's Courts of Record.

Repeal of certain Powers given to Justices.—By *sect. 18*, all provisions in railway acts, that empower two justices to decide disputes respecting the proper places for openings in the ledges or flanches of railways, are repealed ; and by *sect. 19*, the Board of Trade are to determine such disputes in future.

What Notice required before the Opening of a Railway.—By 5 & 6 Vict. c. 55, s. 4, no railway, or portion of any railway, shall be opened for the public conveyance of passengers, until one calendar month after notice in writing of the intention of opening the same shall have been given by the company to the Board of Trade, and until ten days after notice in writing of the time when the railway, or portion of railway, will be, in their opinion, sufficiently completed for the safe conveyance of passengers, and ready for inspection ; under the penalty (by *sect. 5*) of 20*l.* for every day during which the same shall continue open until the said notices shall have been duly given and shall have expired, recoverable in any Court of Record.

Where the Opening must be postponed.—By *sect. 6*, if the officer appointed by the Board of Trade to inspect any such railway, or portion of railway, shall, after inspection thereof, report in writing to the Board, that in his opinion the opening of the same would be attended with danger to the public using the same, by reason of the incompleteness of the works or permanent way, or the insufficiency of the establishment for working such railway, together with the grounds of such opinion, the Board may, from time to time, as often as such officer shall, after further inspection thereof, so report, order the company to postpone such opening for any period not exceeding one calendar month at any one time, until it shall appear to the Board that such opening may take place without danger to the public. If any such railway, or any portion thereof, shall be opened contrary

to any such order, the company are liable to a penalty of 20*l.* for every day during which the same shall continue open contrary to such order, recoverable in any Court of Record. But no such order shall be binding, unless therewith shall be delivered to the company a copy of the report of the officer on which such order shall be founded.

Company must give Notice of Accidents.—By *sect. 7*, every railway company shall, within forty-eight hours after the occurrence of any accident attended with serious personal injury to the public, give notice thereof to the Board of Trade, under the penalty of 5*l.* for every day during which the omission to give the same shall continue, recoverable in any Court of Record.

And make Returns of them, pursuant to Requisitions of Board of Trade.—By *sect. 8*, the Board of Trade may order any company to make up and deliver to them returns of serious accidents occurring in the course of the public traffic upon the railway, whether attended with personal injury or not, in such form and manner as the Board shall require, with a view to the public safety; and if any such returns shall not be so delivered within fourteen days after the same shall have been required, the company are liable to a penalty of 5*l.* for every day during which they shall neglect to deliver the same, recoverable in any Court of Record. All such returns shall be privileged communications, and shall not be evidence in any Court whatsoever.

Obligation to erect Fences.—By *sect. 10*, all railway companies shall be under the same liability of obligation to erect, and to maintain and repair, good and sufficient fences throughout the whole of their respective lines, as they would have been if every part of such fences had been originally ordered to be made under an order of justices, by virtue of the provisions to that effect in the acts of parliament relating to such railways respectively.

Disputes between Companies having a common terminus.—By *sect. 11*, where two or more companies, whose railways have a common *terminus*, or a portion of the same line of rail in common, or which form separate portions of one continued line, shall not be able to agree upon arrangements for conducting at such common *terminus*, or at the point of junction between them, their joint traffic, with safety to the public, the Board of Trade, upon the application of either of the parties, may decide the questions in dispute between

them, so far as the same relate to the safety of the public, and order and determine whether the whole, or what proportion of, the expenses attending on such arrangements, shall be borne by either of the parties. And if any company shall refuse or wilfully neglect to obey any such order, they are liable to a penalty of 20*l.* per day during which such refusal or neglect shall continue, recoverable in any Court of Record.

Branch Railways.—By *sect. 12*, powers of making branch communications with railways, and of entering upon them with locomotive engines, are regulated by the Board of Trade.

When Bridges or Archways may be made over or under Turnpike Roads.—By *sect. 13*, where any railway company shall be willing at their own expense to carry any turnpike road, highway, or private road, or tramway, over or under their railway, by means of a bridge or arch, in lieu of crossing the same on the level, the Board of Trade, on the application of the company, and after hearing the several parties interested, if it shall appear to the Board that such level crossing endangers the public safety, and that the proposal of the company does not involve any violation of existing rights or interests without adequate compensation, may give the company full power and authority for removing the danger at their own expense, either by building a bridge, or by such other arrangement as the nature of the case shall require, subject to such conditions as the Board shall direct.

Where Companies may enter upon adjoining Lands to repair or prevent Accidents.—By *sect. 14*, the Board of Trade may empower any railway company, in case of any accident or slip happening or being apprehended to any cutting, embankment, or other work belonging to them, to enter upon any lands adjoining their railway, for the purpose of repairing or preventing such accident, and to do such works as may be necessary for the purpose. In case of necessity, however, the company may enter upon such lands and do such works, without the previous sanction of the Board; provided they, within forty-eight hours after such entry, make a report to the Board, specifying the nature of such accident, or apprehended accident, and of the works necessary to be done. Such power shall cease and determine, if the Board shall, after considering the report, certify that their exercise is not necessary for the public safety. The works must be as little injurious to the adjoining lands, as the nature of the accident, or apprehended accident, will admit of, and be executed

with all possible dispatch; and full compensation must be made to the owners and occupiers of such lands, for the loss or injury or inconvenience sustained by them respectively by reason of such works; the amount of which compensation, in case of any dispute about the same, shall be settled in the same manner as cases of disputed compensation are directed to be settled by the acts relating to the railway, on which such works may become necessary. No land shall be taken permanently by any company for such works, without such certificate from the Board of Trade as is after specified.

*When additional Land may be taken by Railway Companies.]—*By sect. 15, in every case in which the Board of Trade shall certify that the public safety requires additional land to be taken by any company for the purpose of giving increased width to the embankments and inclination to the slopes, or for making approaches to bridges or archways, or for doing works for the repair or prevention of accidents, the compulsory powers of purchasing and taking land contained in the act or acts of such company, together with all the clauses and provisions relative thereto, shall, as regards such portion or portions of land as are mentioned in the certificate of the Board of Trade, revive and be in full force for such further period as shall be mentioned in such certificate. But any company applying to the Board for any such certificate shall give fourteen days notice in writing, in the manner prescribed by the act or acts of such company for serving notices on land owners, of their intention to make such application, to all the parties interested in such lands, or such of them as shall be known to the company; and shall state in such notice the particulars of the lands required. If any of such parties interested shall apply within the period of fourteen days to the Board, such party shall be heard by them before any such certificate is given. Where any such application shall have been made by any company, and such certificate shall have been refused, the directors of the company shall, if required by the Board of Trade, repay to the party resisting such application any expenses which he or they may have incurred in such resistance.

By sect. 16, carriages of greater weight than four tons may now be used on railways.

*Punishment of the Company's Servants for misconduct.]—*By sect. 17, any officer or agent of any company, or any special constable duly appointed, and all such persons as they may call to their

assistance, may seize and detain any engine driver, waggon driver, guard, porter, servant, or other person employed by any company or person in conducting traffic upon the railway, or in repairing and maintaining the works of the said railway, who shall be found drunk while so employed, or who shall commit any offence against any of the bye laws, rules, or regulations of the company, or who shall wilfully, maliciously, or negligently do, or omit to do, any act whereby the life or limb of any person passing along or being upon such railway, or the works thereof respectively, shall be, or might be, injured or endangered, or whereby the passage of any engines, carriages, or trains shall be, or might be, obstructed or impeded, and may convey the offender, or any person counselling, aiding, or assisting in such offence, with all convenient dispatch before some justice of the peace for the place within which such offence shall be committed, without any warrant. Every such person so offending, and every person counselling, aiding, or assisting therein, shall, when convicted, upon the oath of one witness, without any information in writing, be imprisoned, with or without hard labour, not exceeding two calendar months, or shall forfeit to her Majesty, not exceeding 10*l.*, and in default of payment be imprisoned as above mentioned: every such penalty to be returned to the next quarter sessions, in the usual manner.

Delivery and Service of Notices, &c.—By *sect. 19*, all notices, returns, and other documents required to be given to or laid before the Board of Trade, must be delivered at, or sent by the post to, the office of the Board. And all notices, requisitions, orders, regulations, appointments, certificates, certified copies, and other documents in writing, signed by one of the secretaries of the Board, or by some officer appointed for that purpose, and purporting to be made by the Board, shall be deemed to have been made by them, and, in the absence of evidence to the contrary, without proof of the authority of the person signing the same, or of the signature thereto; and service of the same at one of the terminal offices of any company on the secretary or clerk of the company, or by sending the same by post, addressed to him at such office, shall be deemed good service upon the company.

Conveyance of Troops, &c.—By *sect. 20*, railway companies are bound to convey military and police forces at certain prices to be settled.

Recovery of Penalties.—By *sect. 22*, all penalties, for the appli-

cation of which no special provision is made, shall be recovered in the name and for the use of her Majesty, in the manner provided by the 3 & 4 Vict. c. 79.

Rape.

BY 4 & 5 Vict. c. 56, s. 3, every person convicted of the crime of rape, or unlawfully and carnally knowing and abusing any girl under the age of ten years, notwithstanding the child consents, is liable to *Transportation for life*.

By 9 Geo. 4, c. 31, s. 17, if the girl is above the age of ten, and under twelve, then the offence of carnally knowing her is a *Misdemeanor*, punishable by imprisonment, with or without hard labour, in the common gaol or house of correction, for such time as the Court shall award. And by *sect. 31*, every one, who shall counsel, aid, or abet the commission of this last mentioned offence, is also liable to be punished as a principal offender.

All who are present aiding and assisting a man to commit a *rape*, are principal offenders in the second degree; and this, whether they be men or women. There may be also accessaries *before*, and *after*, in this offence; an accessary *before* the fact being, by 9 Geo. 4, c. 31, s. 31, punishable with transportation not exceeding fourteen years, or with imprisonment, with or without hard labour, not exceeding three years; and an accessary *after* the fact, with similar imprisonment not exceeding two years.

By 9 Geo. 4, c. 31, s. 25, an assault, with intent to commit a rape, is punishable with imprisonment and hard labour not exceeding two years; and the Court may, in addition, require the offender to find sureties for keeping the peace,

And see further 2 Deac. Crim. Law, 1080.

1. Warrant to apprehend an Offender charged with a Rape.

Middlesex, } To the constable of —, and to all other constables and peace officers
 • to wit. } in and for the said county.

Forasmuch as A. B. of — in the said county, single-woman, hath this day made complaint upon oath before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county of Middlesex, that C. D. of — in the said county, labourer, on the — day of — instant, did violently and feloniously make an assault upon her, and then and there violently and against her will, did ravish and carnally know her, the said A. B.: These are therefore to command you, in her Majesty's name, forthwith to apprehend, and bring before me, or some other of her Majesty's justices of the peace in and for the said county, the body of the said C. D. to answer to the said complaint, and to be further dealt with according to law. Herein

fail you not. Given under my hand and seal this — day of — in the year of our Lord 1843.

2. *The like against a Party charged with an Assault, with Intent to commit a Rape.*

[Commencement as above], that C. D., of &c., on &c., at &c., unlawfully did assault the said A. B., with intent her the said A. B. violently and against her will then and there feloniously to ravish, and carnally to know : These are therefore, &c. [as above.]

Receivers of Stolen Goods.

And see *Accessaries*.

WHERE a Felony.—By the 7 & 8 Geo. 4, c. 29, s. 54, if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing or taking whereof shall amount to a felony, either at common law, or by virtue of that act,—such person knowing the same to have been feloniously stolen or taken,—he is guilty of *Felony*, and may be indicted and convicted, either as an accessary after the fact, or for a substantive felony, whether the principal felon shall, or shall not, have been previously convicted, or shall, or shall not, be amenable to justice. Every such receiver is punishable with *Transportation not exceeding fourteen years, nor less than seven, or to be imprisoned not exceeding three years, with or without hard labour and solitary confinement (by sect. 4), and if a male, to be once, twice, or thrice publicly or privately whipped (if the Court shall think fit,) in addition to such imprisonment.*

When a Misdemeanor.—By sect. 55, where the stealing of the property is only a *Misdemeanor*, then the receiver likewise is only guilty of a *Misdemeanor*, and may be indicted, as in the former case, whether the principal has, or has not, been convicted, or is, or is not, amenable to justice; and the punishment in this case is *Transportation for seven years, or imprisonment not exceeding two, with or without hard labour, solitary confinement, and whipping, in addition to the imprisonment.*

When punishable on summary Conviction.—By sect. 60, where the stealing or taking of any property whatsoever is by the act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment, to which a per-

son guilty of a first, second, or subsequent offence of stealing or taking such property is by that act made liable.

And see further 2 Deac. Crim. Law, 1087.

1. *Warrant to apprehend a Receiver of stolen Goods, for the Felony.*

Middlesex, } To the constable of — in the county of Middlesex, and to all other
to wit. } constables and peace officers in the said county.

Whereas A. B. of — in the county of —, gentleman, hath this day made oath before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, that one C. D. [or, if the principal be unknown, "a certain person or persons unknown"] on &c., at &c., did feloniously steal, take, and carry away twelve silver spoons of the goods and chattels of the said A. B., and that he the said A. B. hath just cause to suspect, and doth suspect, that E. F. of — pawnbroker, hath feloniously received the said silver spoons, knowing the same to have been feloniously stolen; These are therefore, in her Majesty's name, to command you forthwith to apprehend and bring before me, or some other justice of the peace in and for the said county the body of the said E. F. to answer the said complaint, and to be further dealt with according to law. Given under my hand and seal this — day of — in the year of our Lord 1843.

2. *Commitment of the Receiver, together with the principal Felon.*

Middlesex, } To the constable of — in the said county, and to the keeper of her
to wit. } Majesty's gaol of Newgate, in the city of London, or his deputy.

Whereas A. B. of &c. [as above]; These are therefore to command you the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the keeper of the said common gaol the bodies of the said C. D. and E. F., together with this warrant. And you, the said keeper, are hereby required to receive the said C. D. and E. F. into your custody, and them there safely to keep, until they shall be delivered by due course of law. Given under my hand and seal at — in the said county, this — day of — in the year of our Lord 1843.

3. *Conviction (a) for receiving stolen Property, where the Offence of the Principal is punishable by Summary Conviction, under 7 & 8 Geo. 4, c. 29, ss. 39, 60.*

Middlesex, } Be it remembered, that on the — day of — in the year of our
to wit. } Lord 1843, at — in the county of Middlesex, E. F. of &c., is convicted before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, for that he the said E. F. on &c., at &c., two plants (b) called geraniums, and two other plants called myrtles, of the value of four shillings, the property of A. B. of &c., by one C. D. then lately before unlawfully stolen, taken, and carried away from a certain greenhouse of the said A. B., in which the same were then and there growing, did unlawfully receive from the said C. D., he the said E. F. then and there well knowing the said plants to have been unlawfully come by, as aforesaid, against the form of the statute in such case made and provided. And I, the said J. P., do therefore adjudge the said E. F. for his said offence, to forfeit and pay the sum of

(a) This form of conviction is given by the 7 & 8 Geo. 4, c. 29, s. 71. (b) See ante, p. 384.

5*l.* over and above the value of the said plants so stolen, and the further sum of 4*s.*, being the value of the said plants, and also to pay the sum of 4*s.* for costs (*b*); and, in default of immediate payment of the said sums, to be imprisoned at the house of correction at — in the said county, and there kept to hard labour for the space of — (*c*) calendar months, unless the said sums shall be sooner paid. And I direct that the said sum of 5*l.* shall be paid to G. H., one of the overseers (*d*) of the poor of the parish in which the said offence was committed, to be applied by him according to the directions of the statute in that case made and provided; and that the said sum of 4*s.* shall be paid to the said A. B. (*e*). And I order that the said sum of 4*s.* for costs shall be also paid to the said A. B. Given under my hand and seal the day and year first above mentioned.

Recognizance.

And see **Bail, Commitment, Surety.**

WHEREVER authority is given to a justice of the peace to cause a man to do a thing, he has power to bind him by recognizance to do it; and if the party refuse to be so bound, the justice may commit him (*f*). But a justice cannot commit a party for refusing to be bound over to give evidence, unless there is a person legally charged with an offence, and the party is duly apprised of the existence of such a charge (*g*).

Recognizance to prosecute and give Evidence.] — By the 7 Geo. 4, c. 64, s. 2, where a justice of the peace commits for trial a party charged with *felony*, he has authority to bind by recognizance all such persons as know or declare any thing material touching any such felony or suspicion of felony, to appear at the next court of oyer and terminer, or gaol delivery, or superior criminal court of a county palatine, or great sessions, or sessions of the peace, at which the trial thereof is intended to be, then and there to prosecute and give evidence against the party accused; and he must subscribe the recognizance, and cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court. And by *sect. 3*, the justice has the like authority to bind persons by recognizance for the like purpose in cases of *misdeemeanor*.

By *sect. 5*, if any justice shall offend in anything contrary to the true intent and meaning of the above provision, the court, to whose

(*b*) See *sect. 71*.

(*c*) See *sect. 67, ante*, p. 221.

(*d*) See *sect. 66*.

(*e*) *Ibid.*

(*f*) *Dalt. c. 168*; 1 *Hale*, 586; 2 *Hale*, 52; *Bennet v. Watson*, 3 *M. & S.* 1.

(*g*) *Cropper v. Horton*, 4 *Dow. & R.* *M. C.* 42.

officer any such recognizance ought to have been delivered, shall, upon examination and proof of the offence in a summary manner, set such fine upon the justice as the court shall think meet.

The party's own recognizance, without sureties, is all that can be required by the justice; unless in the case of infants and married women, who, as they cannot bind themselves, must find sureties for their appearance (*h*); but in one case, where an infant had entered into a recognizance to prosecute, which was forfeited by his default, the Court of Exchequer decided that infancy was not a sufficient ground for discharging it (*i*).

What the Recognizance should specify.—By 3 Geo. 4, c. 46, s. 4, every justice of the peace, before whom any recognizance is taken, is required to give to the parties entering into the same a written or printed notice (*h*), in the form given in the schedule; and the justice must in such recognizance specify not only the profession, art, mystery, or trade of every person so entering into the recognizance, together with their christian and surnames, but also the parish, township, or place of his or her residence; and in case such residence shall be in any city, town, or borough, he must also specify the name of the street and number of the house in which the party shall reside, and also whether owner or tenant thereof, or lodger therein.

1. Recognizance, with Sureties.

County of } Be it remembered, that on the — day of —, in the — year of —. } the reign of our lady Victoria, of the united kingdom of Great Britain and Ireland, Queen, defender of the faith, A. B., of —, in the county aforesaid, gentleman, C. D., of —, in the county aforesaid, esquire, and E. F., of —, in the county aforesaid, farmer, personally came before me, J. P., esquire, one of the justices of our said lady the Queen, assigned to keep the peace in the said county, and acknowledged themselves to owe to our said lady the Queen, that is to say, the said A. B. the sum of 100*l.*, and the said C. D. and E. F. each the sum of 50*l.*, separately, of good and lawful money of Great Britain, to be made and levied of their goods and chattels,

(*h*) *Bennet v. Watson*, 3 M. & S. 1.

(*i*) *Ex parte Williams*, 13 Pri 673.

(*h*) The form of the notice relates only to recognizances of a party admitted to bail, to be returned to the general or quarter sessions; but the words "any recognizance," in the above section, appear sufficient to embrace all recognizances. The following is the form of the notice given in the schedule, which is certainly not applicable to a recognizance to prosecute and give evidence at the assizes:—

— } Take notice that you,*, —, of to wit. } —, are bound in the sum of £—, and your sureties in the sums of £— each, to appear at the quarter or general sessions of the peace for the county of —, to be holden at —, on the — day of — next; and unless you personally make your appearance accordingly, the recognizances entered into by yourself and securities will be forthwith levied on you and your bail. Dated this — day of —.

lands and tenements, respectively, to the use of our said lady the Queen, her heirs and successors, if the said A. B. shall make default in the condition hereunder written.

Acknowledged before me,
J. P

2. *Recognizance, without sureties.*

County of } Be it remembered, that on the — day of —, &c. [*as above*], A. B.,
— of —, in the said county, gentleman, personally came before me, J. P.,
esquire, one of the justices of our said lady the Queen, assigned to keep the peace in
the said county, and acknowledged himself to owe to our said lady the Queen, 20*l.*, of
good and lawful money of Great Britain, to be made and levied of his goods and
chattels, lands and tenements, to the use of our said lady the Queen, her heirs and
successors, if he the said A. B. shall fail in the condition hereon indorsed.

3. *Condition of Recognizance to prosecute and give Evidence at the Assizes.*

The condition of the above written recognizance is such, that whereas one G. H.,
late of —, was this day brought before the justice above-mentioned by the above
bounden A. B., and was by him charged, for that the said G. H., on —, at —,
&c. [*describing the offence as in the warrant*]: if therefore he the said A. B. shall and
do at the next general gaol delivery to be holden in and for the said county, prefer, or
cause to be preferred, one bill of indictment for the said felony against the said G. H.,
and shall then also give evidence there concerning the same, as well to the jurors that
shall then inquire of the said felony, as also to them that shall pass upon the trial of
the said A. B., then the said recognizance to be void, or else to stand in full force and
virtue.

4. *Condition of a Recognizance to appear as a Witness at the Quarter Sessions.*

The condition of the within written recognizance is such, that if the within bounden
C. D. shall personally appear at the next quarter sessions of the peace, to be holden
at —, in and for the said county, and then and there give such evidence as he
knoweth, upon a bill of indictment to be exhibited by A. B. of —, gentleman, to
the grand jury, against G. H., late of —, labourer, for feloniously stealing twelve
silver spoons, the property of the said A. B.; and in case the said bill be found a true
bill, if the said C. D. shall then and there give evidence to the jury that shall pass
on the trial of the said G. H. upon the said bill of indictment, and not depart thence
without leave of the Court; then this recognizance to be void, but otherwise to remain
in full force and virtue.

Registry of Births, &c.

BY 52 Geo. 3, c. 146, some useful regulations are enacted for the keep-
ing and preserving of registers of baptisms, marriages, and burials.
And by 11 Geo. 4 & 1 Will. 4, c. 66, ss. 20, 22, the forgery of such
registers, or copies of them, is declared to be felony. See *Part III.*
ante, p. 315.

By 6 & 7 Will. 4, c. 86, so much of the two former acts as relates to the registration of *marriages* is repealed, and new provisions made for that purpose; as well as further provisions for the registration of births and deaths.

Information as to Birth.—By sect. 20, the father or mother of every child born in England, or in case of the death, illness, absence, or inability of the father and mother, the occupier of the house or tenement in which such child shall have been born, shall within forty-two days next after the day of every such birth, give information, upon being required so to do, to the registrar appointed by the act, according to the best of his or her knowledge and belief, of the several particulars required to be known and registered touching the birth of such child. If he refuse the information on such request, he is indictable for a *misdemeanor* (1).

Registration after forty-two days from the Birth.—By sect. 22, after the expiration of forty-two days following the day of the birth of any child, it shall not be lawful for any registrar to register such child, except in the following manner, that is to say,—any person present at the birth, or the father or guardian, must, within six calendar months next after the birth, make a solemn declaration of the particulars required to be known touching the birth of such child, according to the best of his or her knowledge and belief, and the registrar must then, in the presence of the superintendent registrar, register the birth of the child, according to the information of the person making the declaration; and the superintendent registrar must sign the entry of the birth, as well as the registrar; for which he is entitled to have a fee of 2s. 6d. from the person requiring the same to be registered; and the registrar, over and above his ordinary fee in respect of every birth so registered by him, is entitled, unless the delay shall have been occasioned by his default, to have a fee of 5s. No register of births can be given in evidence to prove the birth of any child, wherein it shall appear that forty-two days have intervened between the day of the birth and the day of the registration of the birth, unless the entry shall be signed by the superintendent registrar. And every person, who shall knowingly register, or cause to be registered, the birth of any child, otherwise, after the expiration of forty-two days from the birth, shall forfeit not exceeding 50s.

No Registration after six months.—By sect. 23, after the expiration of six calendar months following the birth of any child, it shall not be lawful for any registrar to register the birth; and no register of births, except in the case of children born at sea, shall be given in evidence to prove the birth of any child, wherein it shall appear that six calendar months have intervened between the day of the birth and the day of the registration. Every person, who shall knowingly register, or cause to be registered, the birth of any child, after the expiration of six calendar months from the birth, is also liable to a penalty not exceeding 50*l*.

Certificate of the Registry of Death to be given to the Undertaker.—By sect. 27, every registrar, immediately upon registering any death, or as soon thereafter as he shall be required so to do, shall without fee or reward deliver to the undertaker or other person having charge of the funeral, a certificate under his hand, according to the form in the schedule, that such death has been duly registered, which certificate must be delivered by the undertaker to the minister officiating at the funeral of the dead body; and if any dead body shall have been buried, for which no such certificate shall have been so delivered, the person so officiating at the burial, must forthwith give notice thereof to the registrar. But the coroner, upon holding any inquest, may order the body to be buried before registry of the death; in which case he must give a certificate of his order in writing under his hand, according to the form in the schedule, to the undertaker or person having charge of the funeral, which must be delivered by him to the minister; and every person, who shall bury, or perform any funeral or any religious service for the funeral of any dead body, for which no certificate shall have been duly made and delivered, either by the registrar or coroner, and who shall not within seven days give notice thereof to the registrar, is liable to a penalty not exceeding 10*l*.

Penalty for giving false Information.—By sect. 41, every person who shall wilfully make, or cause to be made, for the purpose of being inserted in any register of birth, death, or marriage, any false statement touching any of the particulars required to be known and registered, is subject to the pains and penalties of perjury.

Penalty for refusing to register, &c.—By sect. 42, every person who shall refuse, or without reasonable cause omit, to register any marriage solemnized by him, or which he ought to register, and every registrar who shall refuse, or without reasonable cause omit,

to register any birth or death of which he shall have had due notice; and every person having the custody of any register book, or certified copy thereof, or any part thereof, who shall carelessly lose or injure the same, or carelessly allow the same to be injured whilst in his keeping, shall forfeit not exceeding 50*l*.

Destroying or falsifying Register Books.—By *sect. 43*, every person, who shall wilfully destroy or injure, or cause to be destroyed or injured, any register book, or any part, or certified copy of any part thereof; or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of any such register book or certified copy thereof; or shall wilfully insert, or cause to be inserted therein, any false entry of any birth, death, or marriage; or shall wilfully give any false certificate, or shall certify any writing to be a copy or extract of any register book, knowing the same register to be false in any part thereof; or shall forge or counterfeit the seal of the register office; is guilty of *felony*.

Recovery of Penalties.—By *sect. 45*, all fines and forfeitures, unless otherwise directed, may be recovered before any two justices of the peace for the county, city, or place where the offence shall have happened, on the oath of one witness; on the conviction of the offender, either on his or her confession, or by the oath of any one or more credible witness or witnesses (which oath such justices are hereby empowered to administer), and if not forthwith paid, with the costs of the conviction, the same may be levied by distress, by warrant under the hand and seal of such justices; and for want of distress, they may commit the offender to the common gaol or house of correction not exceeding one calendar month; one moiety of such fines and forfeitures to go to the informer, and the other moiety to the registrar general, or such other person as the Lords of the Treasury shall appoint, for the use of the crown. No distress shall be deemed unlawful, for any defect or want of form in the summons, conviction, or warrant of distress, or on account of any irregularity which shall be afterwards committed by the party distraining; but the person aggrieved by such irregularity may recover full satisfaction for the special damage in an action on the case.

Appeal.—By *sect. 46*, where the penalty shall exceed 5*l*., an appeal is given to the next quarter sessions, holden not sooner than twelve days after the conviction, upon giving to the complainant notice in writing of the appeal, and of the cause and matter thereof, within three days after the conviction, and seven clear days at the

least before the sessions, and either remaining in custody until the sessions, or entering into a recognizance with two sufficient sureties, to appear at the sessions and try the appeal, and abide the judgment of the Court.

No Certiorari.—By *sect. 47*, no conviction or adjudication to be quashed for want of form, or removed by *Certiorari*; and no warrant of commitment to be held void by reason of any defect therein, if it be alleged that the party has been convicted, and there be a valid conviction.

Act not to affect the Registration of Baptisms, &c. as by Law established.—By *sect. 49*, nothing in the act contained shall affect the registration of baptisms, or burials, as by law established, or the right of any officiating minister to receive the fees now usually paid for the performance or registration of any baptism, burial, or marriage.

Registry of Deeds—For forging memorials of, see *Forgery*,
ante, p. 314.

Rent—See *Landlord and Tenant*.

Rescue.

And see *Escape, Prison Breaking*.

RESCUE is the forcibly setting any one at liberty from a legal arrest, or imprisonment; and it is, by common law, the same offence in the party so rescuing, as in the prisoner for breaking prison. A rescue, therefore, of one apprehended for felony, is *felony*; for treason, *treason*; and for a misdemeanor, a *misdemeanor*. But, although the party charged with a rescue can be apprehended immediately for the offence, he cannot be convicted, until the principal is convicted. And though the rescue of a prisoner charged with felony is also felony, it was by the former law merely punishable as a *felony, with benefit of clergy*; and therefore the offender could not be transported, but merely imprisoned for twelve months, and whipped, notwithstanding the offence of the principal amounted to a capital felony (*m*). In order to increase the punishment of the offence, it was therefore enacted by the 1 & 2 Geo. 4, c. 88, s. 1, that if any

person shall rescue, or aid or assist in rescuing, from the lawful custody of any constable or other person whomsoever, any person charged with, or suspected of, or committed for, any felony, or on suspicion thereof, then, if the person so offending shall be convicted of *felony*, and be entitled to the benefit of clergy, and be liable to be imprisoned for any term not exceeding one year, the Court before whom such person shall be convicted may order, that the party, instead of being fined and imprisoned, shall be *Transported for seven years, or be imprisoned, with or without hard labour, for not less than one, and not exceeding three, years.*

There is some inconsistency between this punishment for the *actual rescue* of a prisoner, and the *aiding and assisting* him to escape; for, whereas by the above statute, the offender, for an actual rescue, can only be transported for *seven years*, the merely *aiding and assisting* a prisoner in attempting to escape, although no escape be actually effected, is punishable, by the 4 Geo. 4, c. 64, s. 43, with transportation for *fourteen years* (n).

In cases of Murder.]—Various other enactments are provided by the statute law relating to rescue, and attempts to rescue, when the prisoner is charged with a particular offence, or where the rescue is effected or attempted under particular circumstances. Thus, by the 25 Geo. 2, c. 37, s. 9 (o), if any person shall by force set at liberty, or rescue, or attempt to rescue or set at liberty, any person out of prison, who shall be committed for, or found guilty of *murder*; or rescue, or attempt to rescue, any person convicted of murder going to execution, or during execution; the offender was declared to be guilty of *Felony, punishable with death*; but now, by 7 Will. 4 & 1 Vict. c. 91, the punishment is *Transportation for life, or not less than fifteen years, or imprisonment not exceeding three years.*

And by sect. 10, if any person after execution shall by force rescue, or attempt to rescue, the *body* of the murderer out of the custody of the sheriff or his officers, during its conveyance to any of the places where the same is directed by law to be conveyed; the offender is guilty of *Felony, punishable with Transportation for seven years.*

Aiding and assisting an Escape.]—By the 16 Geo. 2, c. 31, s. 3 (p), if any person shall aid or assist any prisoner to attempt to make his escape from the custody of any constable, or other person, who shall then have the lawful charge of such prisoner in order to

(n) See *Escape, ante*, p. 248.

(o) The 9th and 10th sections of this act are not repealed by the 9 Geo. 4,

c. 31.

(p) This section is not repealed by the 4 Geo. 4, c. 64.

carry him to gaol, by virtue of a warrant of commitment for treason, or any felony (except petty larceny) expressed in such warrant; or if any person shall be aiding and assisting to any felon to attempt to make his escape from on board any boat, ship, or vessel carrying felons for transportation, or from the contractor for the transportation of such felons, or any other person to whom such felon shall have been lawfully delivered in order for transportation; the offender is guilty of *Felony*, punishable with *Transportation for seven years*. But by *sect. 4*, the offence must be prosecuted within a year after it is committed. And see further, for rescuing offenders under sentence of transportation, *post*, **Transportation**.

Offenders sentenced by a Court Martial.—By the Annual Mutiny Acts a provision is made, that whenever an order of a court martial shall have been made for the transportation of any offender, every statute in force touching the escape of felons shall apply to such offender, and to persons aiding or assisting in his escape.

And see further, 2 Deac. Crim. Law, 1103.

Commitment of a person for rescuing another in custody for Felony.

Middlesex, } To the constable of — in the said county, and to the keeper of the
to wit. } common gaol at — in the said county.

Whereas A. B. of — has been this day charged before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, on the oath of C. D., an officer of police, for that the said A. B., on the — day of — instant, while the said C. D. was conveying one E. F. to the common gaol at — in the said county, under and by virtue of a warrant of commitment of one of her Majesty's justices of the peace for the said county, for having feloniously committed a burglary in the house of one G. H., did unlawfully assault and beat the said C. D., and did then and there feloniously, unlawfully, and forcibly, and against the will of the said C. D., rescue the said E. F. out of the custody of the said C. D.: These are therefore to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the keeper of the said common gaol the body of the said A. B., together with this warrant: And you, the said keeper, are hereby required to receive the said A. B. into your custody in the same common gaol, and him there safely keep, until he shall be thence delivered by due course of law. Given under my hand and seal, this — day of —, in the year of our Lord 1843.

Returning from Transportation—See Transportation.

Rewards for helping to Stolen Goods.

BY the 7 & 8 Geo. 4, c. 29, s. 58, every person, who shall corruptly take any money or reward, directly or indirectly, under pretence or

upon account of helping any person to any property whatever, which shall by any *felony* or *misdemeanor* have been stolen, taken, obtained, or converted, as mentioned in the act, shall (unless he cause the offender to be apprehended and brought to trial for the same) be guilty of *Felony*, punishable with *Transportation for life*, or *not less than seven years*; or *with imprisonment not exceeding four years, with or without whipping, hard labour, and solitary confinement*.

By *sect. 59*, if any person shall publicly advertize a reward for the return of any property whatever, which shall have been stolen or lost, and shall in such advertizement use any words purporting that no questions will be asked; or shall make use of any words in any public advertizement, purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing, or making any inquiry after, the person producing such property; or shall promise or offer in any such public advertizement to return to any pawnbroker or other person who may have bought, or advanced money by way of loan upon, any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property; or, if any person shall print or publish such advertizement; the offender is liable to a *penalty of 50l.*, recoverable by action of debt, with full costs of suit.

Riot, and Unlawful Assembly.

And see *Hundred*.

1. *Provisions of the Riot Act.*
2. *Riotously demolishing Churches, Houses, &c.*

3. *Duty of Magistrates in suppressing a Riot.*
4. *Unlawful Assembly.*

A *RIOT* is a tumultuous meeting of *three* or more persons, who actually do an unlawful act of violence, or even a lawful act in a violent and tumultuous manner, which is calculated to excite public terror and alarm. Whoever encourages, or promotes, or takes part in, any riot, whether by words, signs, or gestures, or by wearing the badge or ensign of the rioters, is himself to be considered a rioter; for, in this case, all are principals (*q*). The punishment for this offence, at common law, is fine and imprisonment, discretionary in the Court, according to the circumstances of the offence.

(*q*) 1 Hale, 463; *Clifford v. Brandon*, per Sir J. Mansfield, C. J., 2 Campb. 370.

1. *Provisions of the Riot Act.*

What amounts to a Felony.—By 1 Geo. 1, st. 2, c. 5, s. 1, if any persons to the number of twelve or more, being unlawfully, riotously, or tumultuously assembled together, to the disturbance of the public peace, and being required or commanded by any one justice of the peace, or by the sheriff of the county, or his under-sheriff, or by the mayor, bailiff or bailiffs, or other head officer or justice of the peace of any city or town corporate, where such assembly shall be, by proclamation to be made in the King's name in the form directed by the act, to disperse themselves and peaceably to depart to their habitations, or to their lawful business, shall, to the number of twelve or more, (notwithstanding such proclamation made,) unlawfully, riotously, and tumultuously remain or continue together by the space of one hour after such command or request made by proclamation; then, such continuing together to the number of twelve or more, after such command or request, shall be adjudged *Felony, punishable with death*; but now by 7 Will. 4 & 1 Vict. c. 91, *the punishment is reduced to Transportation for life, or not less than fifteen years, or imprisonment not exceeding three.*

Proclamation.—By sect. 2, the order and form of the proclamation must be made as follows, (that is to say,) the justice, or other person authorized to make the proclamation, shall, among the rioters, or as near to them as he can safely come, with a loud voice command, or cause to be commanded, silence, while proclamation is making; and after that, shall openly and with loud voice, make or cause to be made proclamation in these words, or like in effect:

“ Our Sovereign Lord the King chargeth and commandeth all persons being assembled, immediately to disperse themselves, and peaceably to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of King George for preventing tumults and riotous assemblies.

“ God save the King.”

And every such justice, sheriff, and other head officer aforesaid, within the limits of their respective jurisdictions, are hereby authorized, empowered, and required, on notice or knowledge of any such unlawful, riotous, and tumultuous assembly, to resort to the place where the same shall be of persons to the number of twelve or more, and there to make or cause to be made proclamation in manner aforesaid.

Power to seize Offenders.—By sect. 3, if such persons so unlaw-

fully, riotously, and tumultuously assembled, or twelve or more of them, after proclamation made in manner aforesaid, shall continue together and not disperse themselves within one hour; then every justice of the peace, sheriff or under-sheriff of the county where such assembly shall be, and also every high or petty constable, and other peace officer within such county, and also every mayor, justice of the peace, sheriff, bailiff, and other head officer, high or petty constable, and other peace officer of any city or town corporate where such assembly shall be, and such other persons as shall be commanded to be assisting unto any such justice, &c., may seize and apprehend such persons so unlawfully, riotously, and tumultuously continuing together after proclamation made as aforesaid, and forthwith carry the persons so apprehended before one or more justices of the peace of the county or place where such persons shall be so apprehended, in order to their being proceeded against for such their offences according to law. If the persons so unlawfully, riotously, and tumultuously assembled, or any of them, shall happen to be killed, maimed, or hurt in the dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them, by reason of their resisting the persons so dispersing, seizing, or apprehending, or endeavouring to disperse, seize, or apprehend them; then, every such justice, &c., and all persons, being aiding and assisting to them, or any of them, shall be free, discharged, and indemnified, as well against the King's majesty, as against all and every other person and persons, of, for, or concerning the killing, maiming, or hurting of any such person or persons so unlawfully, riotously, and tumultuously assembled, that shall happen to be so killed, maimed, or hurt as aforesaid.

Opposing and preventing the Proclamation.—By sect. 5, if any person or persons, with force and arms, wilfully and knowingly oppose, obstruct, or in any manner wilfully and knowingly let, hinder, or hurt any person that shall begin to proclaim, or go to proclaim, according to the proclamation directed to be made, whereby such proclamation shall not be made; the offence is declared to be *Felony, punishable with Death*; but reduced by 7 W. 4 & 1 Vict. c. 91, to *transportation or imprisonment*, as above. And every such person or persons so unlawfully, riotously, and tumultuously assembled to the number of twelve or more, to whom proclamation should or ought to have been made, if the same had not been hindered as aforesaid, shall likewise, in case they or any of them, to the

number of twelve or more shall continue together, and not disperse themselves within one hour after such let or hindrance so made, having knowledge of such let or hindrance, are liable to the same punishment.

Limitation of Prosecutions.—By *sect. 8*, no person can be prosecuted, for any offence under the act, unless the prosecution be commenced within twelve months after the offence committed.

2. Riotously demolishing Churches, Houses, &c.

By 7 & 8 Geo. 4, c. 30, s. 8, if any persons, *riotously* and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any church or chapel, or any chapel for the religious worship of persons dissenting from the United Church of England and Ireland duly registered or recorded, or any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture, or in any branch thereof, or any steam engine, or other engine for sinking, draining, or working any mine, or any staith, building, or erection, used in conducting the business of any mine, or any bridge, waggon-way, or trunk for conveying minerals from any mine,—*Felony*, which (by 4 & 5 Vict. c. 56, s. 2,) is *punishable with transportation for not less than seven years, or imprisonment not exceeding three years.*

All persons present, aiding and abetting others in beginning to demolish and pull down a dwelling-house, are within the statute (*r*).

3. Duty of Magistrates in suppressing a Riot.

A justice of the peace may authorize any others by parol command to arrest persons riotously assembled; and they are bound to attend the justice in suppressing a riot, upon pain of fine and imprisonment (*s*). Private persons may likewise arm themselves, in order to suppress a riot; and may make use of arms, if there be a necessity, either in defence of their own lives and property, or to protect the lives and property of other persons (*t*).

(*r*) *R. v. Royce*, 4 Burr. 2073.

(*t*) 1 Hawk. c. 65, s. 11; Poph. 121;

(*s*) 1 Hale, 495; 1 Hawk. c. 65, ss. 1, 2 Bos. & P. 265, note (*a*).
16; 4 Bl. Com. 146.

Where the rioters amount in number to *twelve* or more, the duties of the justice are defined by the above provisions of the Riot Act.

The duties of a magistrate in this instance were much considered in a case which arose out of the riots at Bristol, that occurred a few years ago. It was there determined, that where a justice is called upon to suppress a riot, he is required by law to do all he knows to be in his power, that can reasonably be expected from a man of honesty, and of ordinary prudence, firmness, and activity, under the circumstances; mere purity of intention being, on such an occasion, when the public safety is at stake, no defence, if he fails in his duty; nor would it be a defence, that he acted upon the best professional advice that could be obtained on legal and military points, if his conduct had been faulty in point of law. But, in suppressing a riot, a magistrate is not bound to head the special constables, or to arrange and marshal them; for this is the duty of the chief constable. And if a magistrate calls upon soldiers to suppress a riot, he is not bound to go with them in person; it is enough, if he gives them authority. A magistrate, also, is not criminally answerable for not having called out special constables, and compelled them to act, pursuant to the 1 & 2 Will. 4, c. 41 (*u*); unless it be proved, that information was laid before him upon oath of a riot having occurred, or being expected. Neither is he chargeable with neglect of duty, for not having called out the *posse comitatus*, in case of a riot; if he has given the King's subjects reasonable and timely warning to come to his assistance. And where a magistrate applied personally to some of the inhabitants of a city, called at the houses of others, employed other persons to do the same, sent notices to the churchwardens (on a Sunday) to be published at the places of worship, requiring the people to meet the magistrates at a stated time and place in aid of the civil power, and for the protection of the city, and posted and distributed other notices to the like effect; this was held to be reasonable warning, the riot having recently broken out (*x*).

4. *Unlawful Assembly.*

An *unlawful assembly* is, where three or more persons assemble themselves together, with *intent*, merely, to do an unlawful act, although they part without doing it, or even making any motion towards it.

There are various acts of parliament, which declare that a meeting of persons, under certain circumstances, shall be deemed an unlawful

(*u*) See *ante*, p. 182.

(*x*) *R. v. Pinney*, 3 B. & Adol. 947.

assembly. Thus, by 57 Geo. 3, c. 19, s. 23, it is declared to be unlawful for any person to convene, or give any notice for convening, any meeting consisting of more than fifty persons, or for any number of persons exceeding fifty to meet, in any street, square, or open place in the city or liberties of Westminster, or county of Middlesex, within the distance of a mile from the gate of Westminster Hall (except such parts of the parish of St. Paul, Covent Garden, as are within such distance) for the purpose of considering of or preparing any petition or other address to the King, or to either house of parliament, for alterations of matters in church and state, on any day on which either house of parliament shall meet and sit, nor on any day on which the courts shall sit in Westminster Hall. And if any meeting or assembly shall be assembled or holden on such day, it shall be deemed an *unlawful assembly*. But this enactment is not to apply to any meeting for the election of members of parliament, or to persons attending upon the business of either house of parliament, or of any of the said courts.

And see further, as to unlawful assemblies, *Combinations, Disorderly House, Military training, Oaths*.

1. Commitment for a Riot.

Middlesex,) To the constable of — in the said county, and to the keeper of the
to wit.) common gaol at — in the said county.

Whereas information hath this day been laid before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, on the oath of A. B. and other credible witnesses, that C. D. and E. F., together with divers other evil disposed persons, did, with force and arms, on the — day of — instant, at — in the county aforesaid, unlawfully, riotously, and routously assemble and gather together to disturb the peace, and did then and there make a great noise and disturbance, and break the windows of the dwelling-house of the said A. B., and assault and injure the said A. B., to the great disturbance and terror of the Queen's subjects, and against the Queen's peace: These are therefore to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the keeper of the said common gaol, the bodies of the said C. D. and E. F., together with this warrant. And you, the said keeper, are hereby required to receive the said C. D. and E. F. into your custody in the said common gaol, and them there safely keep, until they shall be thence delivered by due course of law. Given under my hand and seal this — day of — in the year of our Lord 1843.

2. Commitment for riotously demolishing a House, or Machinery, &c. under 7 & 8 Geo. 4, c. 30, s. 8 (y).

[Commencement as above,] that C. D. and E. F. on the — day of — A. D. — at — in the said county, with divers other persons, did unlawfully, riotously, and

tumultuously assemble together, to the disturbance of the public peace ; and, being so unlawfully riotously and tumultuously assembled as aforesaid, did unlawfully, feloniously, and with force, demolish, pull down, and destroy [or “ begin to demolish, &c.”] the dwelling-house of A. B. there situate, against the form of the statute in that case made and provided : These are therefore to command you, &c. [*as in the preceding form.*]

Rivers and Navigation.

FOR the offence of destroying or injuring the banks, locks, &c. of rivers, see *ante*, **Banks of Rivers**.

For the offence of stealing from vessels in navigable rivers, see *post*, **Ships**.

For offences committed on the river *Thames*, see **Thames**.

1. *Regulations as to Shipping in Ports, Harbours, and Navigable Rivers.*
2. *Regulations for keeping the peace on Canals and Navigable Rivers.*

1. *Regulations as to Shipping in Ports, &c.*

No private Ship to fasten to the King's Moorings.—By 54 Geo. 3, c. 159, (for the better regulation of ports, harbours, and navigable rivers,) it is enacted by *sect. 3*, that if any private or merchant ship or vessel, lighter, barge, boat, or other craft whatsoever, for which no licence so to do shall have been first obtained under the authority of the Admiralty, shall, unless forced thereto by stress of weather or other unavoidable accident, be moored or fastened to any of his Majesty's moorings, chains, anchors, buoys, piles, ships, or hulks, or shall in any manner be moored, anchored, or placed within certain distances therein directed to be appropriated for the sole use and purpose of mooring for his Majesty's ships or vessels of war, or hired armed ships in his Majesty's service, or within a certain distance (as directed by the Admiralty) from his Majesty's docks, dock-yards, arsenals, wharfs, moorings, ships, or hulks, or in any spaces directed by the act to be kept open, or in the fair way or channel, or across the stream, in any such port, harbour, haven, or navigable river, so as to obstruct the passage or entrance into the same; the master or other person then on board, and having the charge or command of any such ship or other craft, and in case the proper master of any such ship or other craft shall not happen to be then on board the same, then the owner or owners thereof, whether he, she, or they shall happen to be on board the same or not, shall forfeit not exceeding 10*l.* for every tide which the ship or craft shall stay and remain so moored, anchored, or placed.

Penalty for not removing Vessels when improperly moored.—By sect. 4, if the master of any vessel or craft so improperly moored, anchored, or placed, shall neglect or refuse to unmoor and to remove the same out of the prohibited space and distance, and also out of such fair way, channel, or stream, for the space of one hour after notice to him given in writing, or left on board such ship or vessel for that purpose by one of his Majesty's naval or dock-yard officers, then the harbour master, or any officer belonging to any of his Majesty's ships or dock-yards, and any person acting in his aid, may unmoor the vessel, and remove the same to some proper place beyond the prohibited space, and also out of such fair way, channel, or stream; and every such owner, master, or other person, so neglecting and refusing, is liable to a further penalty of 10*l*.

Clearing Ships, when Anchors accidentally hooked.*—By sect. 5, whenever any private ship shall in any manner, either by accident or otherwise, hook any of his Majesty's moorings, the owner, master, or other person having the charge or command of such ship, shall not proceed to unhook the same, under the penalty of 10*l*.; but shall forthwith give notice thereof to the King's harbour-master, commissioner of the navy, or other chief officer of his Majesty's dock-yard, nearest to the place where the same may happen, in order that effectual assistance may be forthwith given for the purpose of clearing the vessel from such moorings, without damage to the same; for which aid and assistance the master shall pay such sum, not exceeding 5*l*., as shall be adjudged in a summary way by any commissioner of the navy, or justice of the peace, to be recovered in the same manner as any penalty under the act.

Penalty for having Gunpowder on board within certain distances.—By section 6, every owner, master, pilot, or other person having the charge or command of any private or merchant ship or vessel, or other craft, which shall come, arrive, or be, except in cases of stress of weather, within any of the distances to be specified by an order of the Admiralty, having on board thereof any quantity of gunpowder, exceeding five pounds weight together in the whole, or which having come in under stress of weather shall not unship and deliver all such gunpowder within the space of twenty-four hours next after the ceasing of such weather, and thereof forthwith give notice at the custom-house to excuse the production of the necessary certificate, shall forfeit 5*l*. for each and every five pounds weight of gunpowder which shall be found, or which shall have been, on board any such

vessel or craft within any of the prohibited distances, and so in proportion for any greater or less quantity; and every pilot, who shall wilfully and knowingly so offend, and shall be thereof lawfully convicted, shall for ever thereafter be rendered incapable of acting as a pilot.

Penalty for breaining Ships, or having Fires or Turpentine, &c. on board.—By sect. 7, no private ship or other craft shall be breamed afloat in any of the ports, harbours, or havens, or other places of this kingdom, for which any regulations required by the act shall be made, or in which the same shall be in force, nor at any place on shore, where such breaming shall have been prohibited under the act; upon pain that every person offending therein shall forfeit 5*l*. And no fire shall be kept on board of any such vessel or craft in any such port, harbour, or haven, between the hours of eleven in the evening and five in the morning from the 1st of October to the 31st March inclusive, nor between the hours of eleven in the evening and four in the morning from the 1st of April to the 30th of September inclusive; upon pain that every owner, master, or other person having the charge or command of such vessel or craft, shall for every such offence forfeit 5*l*. And no pitch, tar, rosin, turpentine, grease, tallow, oil, or any other combustible matter whatsoever, shall be boiled or heated on board any such vessel within the distance of 250 yards from any of his Majesty's ships or dock yards in any port, harbour, haven, road, roadstead, creek, sound, bay, or navigable river; upon pain that every owner, master, or other person having the charge or command of any such vessel, shall forfeit 5*l*.

Penalty for keeping Guns shotted, or firing them.—By sect. 8, if any owner, master, or other person having the charge or command of any private ship or vessel, shall, while such ship shall lie or be in any port, harbour, haven, road, roadstead, sound, channel, creek, bay, or navigable river, keep any gun shotted or loaded with ball, or shall fire or discharge, or cause or permit to be fired or discharged, any gun before sun-rising or after sun-setting; he is liable to a penalty of 5*s*. for every such gun so kept shotted or loaded, and of 10*s*. for every gun so fired or discharged.

Searching Ships for Gunpowder, &c.—By sect. 9, the harbour master and any officer of a king's ship or dock yard, and any person acting in their aid, may, at any hour between sun-rising and sun-setting, go on board of any ship or vessel to search for gunpowder, guns shotted, and the heating and melting such combustible matters

aforesaid within the prohibited limits; and if the master or other person having the charge or command of the vessel shall, upon demand made, refuse to permit, or shall not permit, any such person to come on board and make a due and proper search and examination for the purposes aforesaid, he is liable to a penalty of 10*l*.

Sweeping for King's Stores.]—By *sect. 10*, no person, not being in his Majesty's service, or employed in his Majesty's dock yards or arsenals, and in the regular performance of his duty, or not being authorized so to do for his Majesty's use by licence under the hand of some commissioner of the navy, shall on any account or pretence whatever creep or sweep for anchors, cables, ropes, rope yarns, or other stores lost, or supposed to be lost, in any port, harbour, haven, road, roadstead, sound, channel, creek, bay, or navigable river, within the distance of 100 yards from any of his Majesty's ships, or moorings, or within any such other distance as is prohibited by the act, under the penalty of 10*l*.

Castings Ballast, &c. overboard.]—By *sect. 11*, if the owner, master, or other person having the charge or command of any vessel, or any person working any quarry, mine or pit near to the sea, or to any harbour, haven, or navigable river, or any other person whatsoever, shall cast, throw, empty, or unlade, or cause or procure to be cast, &c. either from any such vessel, or from the shore, any ballast, stone, slate, gravel, earth, rubbish, wreck, or filth into any port, road, roadstead, harbour, haven, or navigable river, so as to tend to the injury or obstruction of the navigation thereof, or in any place or situation on shore, where the same shall be liable to be washed into the sea, or into any such port or navigable river, either by ordinary or high tides, or by storms or land floods; the offender is liable to a penalty not exceeding 10*l*., besides all expenses which may be incurred in removing to a proper place the matter so deposited; such expenses to be recoverable in the same manner as any penalty. But this provision is not to extend to the unlading any stones, rocks, bricks, lime, or other materials to be used in the building or repairing of any quay, pier, wharf, wear, bridge, or other building, or the banks or sides of any port, harbour, haven, channel, or navigable river, or any materials for repairing any highway.

How Ballast, &c. may be unladen.]—By *sect. 12*, no ship or vessel shall unlade on any part of the shore (except on some wharf properly constructed for the purpose) any ballast, stone, slate, gravel,

earth, rubbish, wreck, or filth, except at high water, or within two hours before or after; and the vessel must approach the shore, as far as the tide, and the draught of water of the vessel, will admit, and under no circumstances deposit any of such matters below low-water mark at neap tides. And any vessel drawing above eleven feet of water at the stern, must unlade all such materials into some lighter, barge, or boat, in order that the same may be conveyed as near the shore as possible at the time of high-water. And by *sect. 12*, all such ballast and other matter shall be cast on shore from the side of the vessel nearest to the land. Every person, who shall offend in the above particulars, shall for every such offence forfeit not exceeding 10*l.*, over and above all expenses incurred in removing to a proper place the matters so improperly deposited; such expenses to be recoverable in the same manner as any penalty.

Improperly loading Ballast.—By *sect. 14*, no person shall take any ballast or shingle from the shores or banks of any port, harbour, or haven, from which the Admiralty shall find it necessary, for the protection of such port, harbour, or haven, or the works thereof, by order published in the London Gazette, to prohibit the taking or removing of such shingle or ballast, under the penalty of 10*l.* And by *sect. 15*, in the taking any ballast on board, and also in discharging the same, every ship or vessel must be provided with and make use of one or more tarpaulins properly stretched and spread, in order to prevent the ballast, or any part thereof, from falling into the sea or harbour; under the penalty of 5*l.* for any neglect.

Commissioners of Navy may act as Justices.—By *sect. 20*, every commissioner of the navy, who for the time being shall be residing at any port, dock yard, or arsenal, near to any place where any offence against the act may be committed, shall be deemed to be a justice of the peace for all the purposes of the act; and all the laws for the protection of justices of the peace in the execution of their office shall extend to all such commissioners, and to all constables, or other peace officers, or other persons acting under their warrant or authority.

Recovery of Penalties.—By *sect. 21*, all penalties must be sued for within twelve calendar months next after the offence shall be committed, before any commissioner of the navy or justice of the peace, residing at or near to the place where the offence shall be committed; one moiety of the penalty to go to the Crown, and the other moiety, with full costs, to the informer. Every such commis-

sioner and justice may, upon information exhibited, or complaint made, grant his warrant in writing under his hand to bring before him any offender; and if, on his conviction, the penalty and costs shall not be forthwith paid, the commissioner or justice may commit the offender to the common gaol or house of correction for the county, city, or borough, at or near to the place where the offence shall be committed, for any time not exceeding three months.

Jurisdiction of Commissioners and Justices.—By sect. 22, any commissioner of the navy residing at or near to any port, harbour, or haven, or any justice of the peace for any county, city, or borough, acting in and for any district or place next adjoining to any such port, harbour, haven, road, roadstead, sound, channel, creek, bay, or navigable river, where any offence may be committed, may proceed in the execution of the act in the same manner, and as fully and effectually to all intents and purposes, as if the offence had been committed locally within the limits of the jurisdiction of such commissioner or justice, although the same may have been committed out of the limits of the jurisdiction of such commissioner or justice, or out of the body of any county.

By sect. 23, a general form of conviction is given, which is not removable by *certiorari*.

Penalty on Witnesses.—By sect. 24, if any person summoned as a witness shall neglect or refuse to appear, without a reasonable excuse, he is liable to a penalty of 10/.

Appeal.—By sect. 26, an appeal is given, within three calendar months after conviction, to the quarter sessions, upon giving ten days notice to the person appealed against, and of the matter of such appeal, and entering into a recognizance, with two sureties, to try such appeal.

By sect. 27, there is the usual limitation as to actions brought against persons for any thing done under the act.

Conviction under Section 11 of the above Act for throwing Ballast overboard (y).

Middlesex, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, A. B. is convicted before me, J. P., esquire, one of the
commissioners of the navy, [or “one of her Majesty’s justices of the peace in and for
the county of Middlesex,”] for that he the said A. B., on the — day of —, at
Limehouse in the said county, being then and there the master, and having the charge
of a certain merchant ship, called the “Britannia,” did cast, throw, empty, and un-
lade, and cause and procure to be cast, thrown, emptied, and unladen, from and out of

(y) This form is given by the act.

the said ship a large quantity, to wit, twenty tons of ballast, gravel, earth, and rubbish into the navigable river of Thames, so as to tend to the injury and obstruction of the navigation of the said river, contrary to the statute in such case made and provided (z). Given under my hand and seal, the day and year first above written.

2. *Regulations for keeping the peace on Canals and Navigable Rivers.*

Appointment of Constables.—By 3 & 4 Vict. c. 50, s. 1, any two justices of the peace, and the watch committee of any incorporated borough, within their several jurisdictions, on the application of the committee or board of directors of the company of proprietors of any canal or navigable river, or of any clerk or agent of any such company duly authorized by such committee or board of directors, may appoint so many persons as they shall think fit from among those who shall be recommended to them for that purpose by the company, to act as constables on or at any such canal or river. Every person so appointed must take an oath or make a solemn declaration in the form required by the act, to be administered by any one justice; and every person so appointed shall then have full power to act as constable for the preservation of the peace, and for the security of persons and property against felonies and other unlawful acts on such canal or river, and the towing paths and works belonging thereto, and on and within any railways, tramroads, wharfs, quays, locks, docks, landing places, warehouses, lands and premises belonging to any such company, and in all places not more than one quarter of a mile distant from either bank of such canal or river, or from such railways; and shall have all such powers, protections, and privileges which any constable duly appointed has within his constableness. But such power shall not extend to authorize any such person to act as constable within the metropolitan police district, or the city of London and the liberties thereof, or in any places beyond the banks, towing paths, and other the premises belonging to such company, as may be situate within any other city, or any incorporated borough.

By whom Constables may be dismissed.—By sect. 2, any two justices, or the watch committee of any incorporated borough, or the canal company, or any clerk or agent of such company duly authorized by the committee or board of directors, may dismiss any such

(z) The above form is very imperfect, there being no adjudication of the penalty, which should be here added, as follows: "And I do declare and adjudge, that the

said A. B. hath forfeited for his said offence the sum of 10*l.* to be distributed according to the form of the statute in such case made and provided."

constable from his office; and no person so dismissed shall be capable of being again appointed or acting as a constable for the same canal, or river, without the consent of the authority by which he was dismissed.

Penalty on Constable for neglect of duty.—By sect. 4, every constable, who shall be guilty of any neglect or breach of duty, shall be liable to a penalty of not more than 10*l.*, which may be deducted from any salary due to him, or, in the discretion of the magistrate before whom such offender shall be convicted, he may be imprisoned in the gaol or house of correction, with or without hard labour, for not more than one calendar month.

Penalty for not delivering up Accoutrements.—By sect. 5, every constable, who shall be dismissed, or shall cease to hold his office, and who shall not forthwith deliver over all the clothing, accoutrements, appointments, and all other necessities which have been supplied to him for the execution of his duty, to such person and at such time and place as shall be directed by the canal company, or by their clerk or agent, shall be liable to be imprisoned in any gaol or house of correction, with or without hard labour, not exceeding one calendar month. And any justice of the peace may issue his warrant to search for, and seize, to the use of such company, all the clothing, accoutrements, appointments, and other necessities which shall not be so delivered over, wherever the same may be found.

Penalty for assaulting Constables.—By sect. 6, every person who shall assault or resist any constable in the execution of his duty, or who shall aid or incite any person so to assault or resist, is liable to a penalty not more than 10*l.*, or, in the discretion of the magistrate, he may be imprisoned in any gaol or house of correction, with or without hard labour, for not more than two calendar months.

Having in possession Instruments for procuring and carrying any Liquors.—By sect. 7, every person, who shall be found upon any such canal or river, or in or upon any lock, dock, warehouse, wharf, quay, or bank thereof, or on board of any boat or vessel lying or being therein, or in any lock or dock thereunto belonging, having in his possession, or under his control, any tube or other instrument for the purpose of unlawfully obtaining any wine, spirits, or other liquors or goods, or having in his possession any skin, bladder, or other utensil, for the purpose of unlawfully secreting or carrying away any such wine, &c.; and any person, who shall attempt unlawfully to obtain any such wine, &c.; shall for every such offence be liable to a

penalty not more than 5*l.*, or, in the discretion of the magistrate, he may be imprisoned, with or without hard labour, for not more than one calendar month.

Injuring the contents of Packages.—By *sect. 8*, every person, who shall bore, pierce, break, cut open, or otherwise injure any cask, box, or package containing wine, spirits, or other liquors, or any case, box, sack, wrapper, package, or roll of goods on board of any boat, vessel, or waggon, or in or upon any warehouse, wharf, quay, or bank, of or belonging to any such canal or river, with intent feloniously to steal, or otherwise unlawfully obtain, or to injure the contents or any part thereof; or who shall unlawfully drink, or wilfully spill or allow to run to waste, any such liquors, or any part thereof; shall for every such offence be liable to a penalty not more than 5*l.*, over and above the value of the goods or liquors so taken or destroyed; or, in the discretion of the magistrate, he may be imprisoned as above, for not more than one calendar month.

Constables may search and apprehend suspected persons.—By *sect. 9*, every constable, having just cause to suspect that any felony, or any other offence against the act, has been, or is about to be, committed in or on board of any boat or other vessel lying in any such canal or river, or any lock or dock thereunto belonging, may enter therein at all times, as well by night as by day, and take all necessary measures for the prevention or detection of all such felonies or other offences, and take into custody all persons suspected of being concerned in the same, and also take charge of all property so suspected to be stolen or embezzled.

When Constable and other persons may apprehend without a Warrant.—By *sect. 10*, any constable may take into custody, without a warrant, any loose, idle and disorderly person whom he shall find disturbing the public peace, or whom he shall have good cause to suspect of having committed, or being about to commit, any felony, misdemeanor, or breach of the peace, or other offence, against the act, and every person whom he shall find between sunset and the hour of eight in the morning, lying or loitering in or upon any towing path, or in or upon any wharf, bridge, railway, quay, landing place, lock, dock, or upon the bank of any such canal or river, and not giving a satisfactory account of himself.

And by *sect. 11*, any person found committing any offence punishable upon summary conviction may be taken into custody, without a warrant, by any constable, or may be apprehended by the owner of

the property with respect to which the offence shall be committed, or by his servant, or any person authorized by him, and may be detained until he can be delivered into the custody of a constable, to be dealt with according to law. Any constable may also stop, search, and detain any vessel, boat, cart, or carriage in or upon which there shall be reason to suspect that anything stolen or unlawfully obtained may be found, and also any person who may be reasonably suspected of having or conveying in any manner any thing stolen or unlawfully obtained.

Detaining persons offering to pawn property.—By sect. 12, any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed with respect to such property, or that the same or any part thereof has been stolen or unlawfully obtained, is authorized, and, if in his power, is required, to apprehend and detain, and as soon as may be to deliver such offender into the custody of a constable, together with such property, to be dealt with according to law.

Summary conviction of Offenders.—By sect. 14, any two justices of the peace, within their several jurisdictions, may summarily convict any person charged with any offence against the act, on the oath of one witness, and award the penalty or punishment provided for such offence.

Power of Commitment and Distress.—By sect. 15, in every case of the adjudication of a pecuniary penalty (z) and non-payment thereof, the justices before whom the offender shall have been convicted, may commit him to any gaol or house of correction within his jurisdiction, for not more than one calendar month, where the sum to be paid shall not exceed 5*l.*, and in any other case not more than two calendar months; the imprisonment to cease on payment of the penalty and the costs; or, instead of imprisonment, the justices may, by warrant under their hands and seals, order such penalty, with the reasonable costs and charges of the conviction, to be levied by distress; and all such convictions and warrants shall be taken to be within the provisions of the 5 Geo. 4, c. 18, for the more effectual recovery of penalties before justices on conviction of offenders (a).

(z) The act is entirely silent as to the application of any pecuniary penalty. But as all fines belong to the King, unless otherwise directed by statute, (Bract. 129,)

the penalties imposed by the above act must be considered as payable to the crown.

(a) See *ante*, p. 233.

Conviction not removable, &c.—By *sect. 16*, a general form of conviction is given, which (by *sect. 17*) shall not be quashed for want of form, or be removed by *certiorari*, or otherwise, into any superior Court. No warrant of commitment shall be void, by reason of any defect therein, provided it be alleged that it is founded on a conviction, and there be a valid conviction to sustain the same. No distress shall be deemed unlawful, nor the party making it a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity afterwards committed by him, but the person aggrieved may recover for the special damage in an action upon the case.

Actions.—By *sect. 18*, the usual protection is given to parties, in case of actions brought against them for any thing done in the execution of the act.

Appeal.—By *sect. 19*, where the penalty shall be more than 3*l.*, an appeal is given to the next quarter sessions for the county, riding, or division wherein the cause of complaint shall have arisen, if the party at the time of the conviction, or within forty-eight hours thereafter, shall enter into a recognizance, with two sufficient sureties, to appear at the sessions to try such appeal, and abide the judgment of the Court, and pay such costs as shall be then awarded. The convicting justices may also bind over the witnesses who shall have been examined in sufficient recognizances to attend and be examined at the hearing of such appeal; and every such witness, on producing a certificate of his being so bound under the hand of the justices, shall be allowed compensation for his time, trouble, and expenses in attending the appeal.

Conviction under the above Act of 3 & 4 Vict. c. 50, s. 8, for piercing a Cask, with intent to steal Wine (b).

Middlesex, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, at — in the county aforesaid, A. B. is convicted before
us, J. P. and W. O., esquires, two of her Majesty's justices of the peace for the said
county, for that he the said A. B. on the — day of — instant, at Paddington in
the said county, did unlawfully bore, pierce, cut open, and otherwise injure a certain
cask containing wine, then and there being in a certain warehouse of and belonging to
the Paddington canal, with intent feloniously to steal some part of the contents of
the said cask: And we do adjudge that the said A. B. shall for the said offence be im-
prisoned in the house of correction at — in the said county, there to be kept to hard

(b) The above form is given by the act.

labour for the space of one calendar month. [If the justice choose to inflict a pecuniary penalty on the offender, then say, "that the said A. B. shall for his said offence forfeit the sum of 5*l.*, and shall pay the same immediately [or 'shall pay the same on or before the — day of —'] to C. D., to be by him applied (c) according to the directions of the statute in that case made and provided."'] Given under our hands the day and year first above mentioned.

Robbery.

ROBBERY is the felonious and forcible taking of goods or money, of any value, from the person of another, or in his presence, against his will, either by actual violence, or by putting him in fear. By 7 & 8 Geo. 4, c. 29, s. 6, this offence was declared to be (as it had indeed always been before) a capital felony; but now by 7 Will. 4 & 1 Vict. c. 87, it is only made capital, where the felon *wounds*, as well as *robs*.

Robbing and wounding.]—By sect. 2 of the last mentioned statute, whosoever shall *rob* any person, and, at the time of, or immediately after, such robbery, shall *stab, cut, or wound*, any person, shall be guilty of *Felony*, and, being convicted thereof, shall suffer *Death*.

Robbing, and using personal violence, being armed.]—By sect. 3, whosoever shall, *being armed with any offensive weapon or instrument, rob, or assault with intent to rob*, any person; or shall *rob* any person, and at the time of, or immediately before, or immediately after, such robbery, shall *beat, strike, or use any other personal violence* to any person; shall be guilty of *Felony*, punishable with *Transportation for life, or not less than fifteen years, or imprisonment not exceeding three years, with or without hard labour and solitary confinement*, by sect. 10.

Extorting money by Accusation of an Unnatural Crime.]—By sect. 4, whosoever shall *accuse, or threaten to accuse*, any person of the abominable crime of *buggery*, committed either with mankind or with beast, or of *any assault with intent to commit the said abominable crime*, with a *view or intent*, in any of the cases aforesaid, to *extort or gain* from such person, and shall by *intimidating* such person by such accusation or threat, *extort or gain* from such person any property, shall be guilty of *Felony*, punishable as by sect. 3.

Simple Robbery, and stealing from the Person.]—By sect. 5, whosoever shall *rob* any person, or shall *steal* any property from the

(c) See *ante*, p. 1047, note (s).

person of another, shall be liable to be transported not exceeding fifteen years, nor less than ten years, or to be imprisoned not exceeding three years, with or without hard labour and solitary confinement.

Assaults with intent to rob.]—By *sect. 6*, whosoever shall *assault* any person, *with intent to rob*, shall be guilty of *Felony*, punishable (except in the cases where a greater punishment is provided by the act) with *Imprisonment not exceeding three years*, as above.

Demanding property with Menaces.]—By *sect. 7*, whosoever shall, *with menaces*, or *by force*, demand any property of any person, *with intent to steal* the same, shall be guilty of *Felony*, punishable as by *sect. 6*.

Accessaries]—By *sect. 9*, every principal in the second degree, and every accessory *before* the fact, are punishable with *Death*, or otherwise, in the same manner as the principal in the first degree; and every accessory *after* the fact (except only a receiver of stolen property) is liable to be imprisoned not exceeding two years, with or without hard labour and solitary confinement.

And see further 2 Dea. Crim. Law, 1126, *et seq.*

Commitment for Robbery.

Middlesex, } To the constable of — in the said county, and to the keeper of the
to wit. } common gaol at — in the said county.

Whereas A. B. hath this day been charged before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, on the oath of C. D., for that he the said A. B. on the — day of — instant, at — in the county aforesaid, did in and upon the said C. D. feloniously make an assault, and him the said C. D. did then and there put in bodily fear and danger of his life, and three pieces of the current gold coin of this realm called sovereigns, and one silver watch, of the monies, goods, and chattels of the said C. D., from the person and against the will of the said C. D., did feloniously and violently steal, take, and carry away: These are therefore to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of the said A. B., together with this warrant. And you, the said keeper, are hereby required to receive the said A. B. into your custody in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law. Given under my hand and seal this — day of — in the year of our Lord 1843.

—◆—
Rogues and Vagabonds—See Vagrants.

—◆—
Roots—See Gardens.

Sacrilege.

SACRILEGE, at common law, is the robbery of a church, or a felonious taking therefrom, accompanied with the breaking of the church (*d*), of things consecrated to pious purposes, as the vessels, ornaments, or goods, of the church. But it appears to be immaterial now, if a breaking and entering are proved, whether the goods stolen appertain to the church, or are the property of a private person. For by 7 & 8 Geo. 4, c. 29, s. 10, if any person shall break and enter any church or chapel, and steal therein any chattel; or, having stolen any chattel in any church or chapel, shall break out of the same; the offender is declared to be guilty of a capital felony. But now, by 5 & 6 Will. 4, c. 81, and 6 & 7 Will. 4, c. 4, the offence is punishable with *Transportation for life, or not less than seven years, or with imprisonment not exceeding three years, with or without hard labour, and solitary confinement.*

1. Commitment for breaking into a Church, and stealing therein.

Commencement as in the last precedent, ante, p. 1050: for that he the said A. B. on the — day of — in the year of our Lord 1843, at — in the said county, did feloniously break and enter the church of the parish of — in the said county there situate, and then and there two silver cups, and two silver plates, of the goods and chattels of the parishioners of the said parish, did then and there feloniously and sacrilegiously steal, take, and carry away, against the form of the statute in such case made and provided: These are therefore to command you, &c. [*as in p. 1050.*]

2. Commitment for stealing in a Church, and breaking out of it.

Commencement as ante, p. 1050: for that he the said A. B. on &c., at &c., in the church of the parish of — in the said county, there situate, did feloniously and sacrilegiously steal, take, and carry away two silver cups and two silver plates of the goods and chattels of the parishioners of the said parish then and there being in the said church. And the said A. B., being so as aforesaid in the said church, and having committed the said felony therein, did then and there feloniously break out of the said church, against the form of the statute in such case made and provided: These are therefore to command you, &c. [*as in p. 1050.*]

Salmon—See **Fish and Fisheries.**

Salvage—See **Ships.**

Savings' Banks.

BY 9 Geo. 4, c. 92, the former acts on this subject are repealed, and new regulations substituted.

By sect. 2, no bank can be formed, unless approved by the justices at the quarter sessions, and by the commissioners for the reduction of the national debt.

Rules.—*By sect. 3*, the rules of the institution are to be entered in a book, which is to be open to the inspection of the depositors, and a copy thereof deposited with the clerk of the peace; and if any alterations are afterwards made in the rules, they must also be entered in such book, and a transcript thereof deposited with the clerk of the peace. Before, however, the rules are so deposited, they must (*by sect. 4*) be submitted to a barrister appointed by the commissioners for the reduction of the national debt; and the transcript of the rules, together with the certificate of the barrister, must be laid before the justices at the quarter sessions, who may reject any of such rules; in which case the clerk of the peace is to give notice to the trustees who have signed the rules. *By sect. 5*, when the rules are so entered and deposited, they are to be binding on the members and depositors; and a copy of the transcript is to be received in evidence.

Treasurer and Trustees.—*By sect. 6*, the treasurer, trustees, or manager, are to derive no benefit from the institution. Every treasurer, actuary, or cashier, must (*by sect. 7*) give security, to be approved of by two trustees and three managers. *By sect. 8*, the effects of the institution are to be vested in the trustees for the time being. *By sect. 9*, no trustee or manager is to be personally liable, except for his own acts and deeds, nor for any thing done by him in virtue of his office, except in cases of wilful neglect or default.

It is doubtful, whether, under this last clause, the trustees are not exempted from personal responsibility for an embezzlement committed by their clerks; but there may be particular facts in a case, which may prevent that clause from attaching (*e*).

By sect. 10, every person who shall have or receive any of the effects of the institution, must, when required by two trustees and three managers, account for and deliver up the same. In case of any neglect or refusal in this respect, the trustees may exhibit a peti-

tion to the justices at the quarter sessions, who may proceed thereon in a summary way.

Investment of Deposits.—By *sect. 11*, the trustees must invest all money in the Bank of England, and not upon any other security; and the remainder of this and the following sections specifically direct how the money is to be dealt with, and the manner in which it is to be drawn out by the trustees. By *sect. 26*, the savings of minors may be invested, whose receipts are declared to be a sufficient discharge; and by *sect. 27*, the same with respect to married women, unless the husband gives notice to the trustees, and requires the payment to be made to him.

Interest.—By *sect. 24*, the interest payable to depositors is not to exceed $2\frac{1}{4}$ d. *per centum per diem*; and by *sect. 49*, it is to be computed half yearly, to the 20th May and 20th November; or yearly to the 20th November.

Regulations as to Depositors.—By *sect. 32*, no sum to be deposited, without disclosing the name, together with the 'profession, business, calling, and residence of the depositor. By *sect. 34*, depositors in one savings' bank cannot make deposits in any other; and every person, at the time of making his first deposit, must declare that he has made none in any other bank. In case of any false declaration, the party forfeits all right and title to any deposit in, or to any funds of, any such savings' bank. By *sect. 35*, the trustees are not to receive from any one person a sum exceeding 30*l.* in the whole, exclusive of compound interest, in any one year ending on the 20th November, nor to receive from him any money, which shall make the sum to which he shall be entitled exceed 150*l.* in the whole. And whenever the money standing in his name shall amount to 200*l.*, principal and interest included, no interest shall thenceforth be payable on such deposit, while it continues at that amount. By *sect. 39*, the deposits may be withdrawn from one savings' bank to be placed in another. *Sect. 40*, and the following sections provide for the payment of the money deposited, in the event of the depositor's death.

Settlement of Disputes.—By *sect. 45*, all disputes between the institution and any individual depositor may be referred to two arbitrators, and if they do not agree, then to the barrister appointed by the commissioners.

This enactment has been held to be compulsory on the parties to refer the matter in dispute to arbitrators, so far as to prevent any depositor from bringing an action against a trustee to recover a

sum deposited (*f*); and if the savings' bank refuse to appoint an arbitrator, a *mandamus* lies to compel them (*g*). Any single depositor may call upon the trustees to appoint an arbitrator on their part, for the purpose of adjudicating on any dispute touching his claim (*h*). But, where it is clear that the inquiry would have no result, the Court of Queen's Bench will not in that case grant a *mandamus*; as, when by a rule of the bank, no deposit can be claimed after the expiration of seven years from the death of the depositor; and a claim, which is proposed to refer, was confessedly not made within that time (*i*).

The 46th and following sections contain regulations as to the accounts of the trustees.

The 50th and following sections relate to the purchase of exchequer bills by the commissioners with the monies standing in their names in the Bank of England.

Purchase of Annuities.]—By the 3 & 4 Will. 4, c. 14, ss. 1 and 2, the trustees of any savings' bank may receive money from depositors for the purchase of annuities not exceeding 20*l.*, which may be contracted for by any two of the trustees or managers on behalf of the commissioners for the reduction of the national debt, and which are declared to be chargeable upon the consolidated fund.

No Re-deposit.]—By *sect.* 29, the power of depositors to withdraw their deposits and re-deposit them in the same bank, which had previously been given them by the 38th section of the former statute, is repealed; and no money can be received from any depositor, which shall in any one year exceed 30*l.*

Military Savings' Banks.]—By 5 & 6 Vict. c. 71, s. 1, military savings' banks may be established; which (by *sect.* 3) are to be regulated by rules to be made by the Secretary at War, with the concurrence of the Commander-in-Chief and the Lords of the Treasury; and (by *sect.* 6) are not to be within the 9 Geo. 4, c. 92, and other acts relating to savings' banks.

Seamen.

FOR regulations relating to apprentices to the sea service, see *Apprentices*, *ante*, p. 67.

(*f*) *Crisp v. Bunbury*, 8 Bing. 394.

(*g*) *Rex v. Witham Savings' Bank*, 1 Ad. & E. 321; *R. v. Cheadle Savings' Bank*, *ibid.* 323, n.

(*h*) *R. v. Mildenhall Savings' Bank*, 6 Ad. & E. 952.

(*i*) *Reg. v. Northwich Savings' Bank*, 9 Ad. & E. 729.

For false personation of seamen in the navy, see *False Personation*, *ante*, p. 275.

For forgery relating to the wills, pay, prize money, pensions, and certificates of seamen in the royal navy, see *Forgery*, *ante*, p. 334.

For offences and regulations relating to shipping, see *post*, *Ships*.

1. *Provisions as to Seamen in the Royal Navy.*

2. *Regulations and Provisions as to Seamen in the Merchant Service.*

1. *Provisions as to Seamen in the Royal Navy.*

Seducing them from their Allegiance.]—By 37 Geo. 3, c. 70 (made perpetual by 57 Geo. 3, c. 7), any person, who shall maliciously and advisedly endeavour to seduce any person serving in his Majesty's forces, by sea or land, from his duty and allegiance to his Majesty, or to incite or stir up any such person to commit any act of mutiny, or to make, or endeavour to make, any mutinous assembly, or to commit any traitorous or mutinous practice whatever; *Felony*, which, by 7 Will. 4 & 1 Vict. c. 91, ss. 1, 2, is punishable with *Transportation for life, or not less than fifteen years, or imprisonment, with or without hard labour and solitary confinement.*

Setting up Trades.]—By 56 Geo. 3, c. 67, which enables officers, mariners, soldiers, and marines, who have been employed in the king's service, to exercise trades in any part of the kingdom, without being liable to be removed to their last legal settlement, until they actually become chargeable, it is provided by *sect. 2*, that two justices may summon the party before them to make oath of the place of his last legal settlement, and are then required to give him an attested copy of his affidavit, in order that he may produce it when required, and which is to be admitted as evidence of such settlement. And if he is again summoned, then, on the production of such attested copy, he is not obliged to take any further oath with regard to his settlement, but may leave a copy of such attested copy, if required.

2. *Regulations and provisions as to Seamen in the Merchant Service.*

Seamen riotously preventing the loading of Vessels.]—By 33 Geo. 3, c. 67, s. 1, (made perpetual by 41 Geo. 3, c. 19), if any seamen, keelmen, casters, or other persons riotously assembled together, to the number of three or more, shall unlawfully, and with force, prevent, hinder, or obstruct the loading or unloading, or the sailing or navigating of any ship, keel, or other vessel, or shall unlawfully, and with force, board any ship, keel, or other vessel, with intent to prevent, hinder, or obstruct the loading or unloading, or the sailing

or navigating of such ship, keel, or other vessel; every such offender, being lawfully convicted upon any indictment at the assizes or quarter sessions, may be imprisoned and kept to hard labour not exceeding twelve calendar months, nor less than six.

By *sect. 8*, the prosecution must be commenced within twelve calendar months after the commission of the offence.

For the protection of seamen in the merchant service, and to facilitate the settlement of disputes between them and masters of vessels, a summary jurisdiction is given by statute to justices of the peace; and various provisions are also made for the relief and support of sick, maimed, and disabled seamen.

Forcibly hindering Seamen from working.—By 9 Geo. 4, c. 31, s. 26, if any person shall unlawfully, and with force, hinder any seaman, keelman, or caster from working at or exercising his lawful trade, business, or occupation; or shall beat, wound, or use any other violence to him, with intent to deter and hinder him from working at or exercising the same; every such offender may be convicted thereof before two justices of the peace, and imprisoned and kept to hard labour in the common gaol or house of correction not exceeding three calendar months.

Forging Certificate for Relief.—By 4 & 5 Will. 4, c. 52, s. 3, if any person shall forge, counterfeit, erase, or alter, or shall procure to be forged, &c., or shall unfairly or unjustly obtain any certificate, in order to entitle him to any of the pensions, allowances, or benefits of that act, and shall produce, or cause such certificate to be produced for that purpose, such certificate shall upon delivery thereof be null and void, and such person applying for relief or provision under the act, shall be for ever incapable of receiving any of the benefits of the act, and shall be subject and liable to the like punishment as an *incorrigible rogue* (k).

Masters and Seamen to make certain payments.—By *sect. 5*, every master of a merchant ship, and every owner navigating his own ship, is required to pay 2s. per month towards a fund provided by the act for relieving disabled seamen, and their widows and children. And, by *sect. 6*, every seaman and pilot must pay 1s. per month; which the master of every ship is (by *sect. 7*) required to deduct and detain out of their wages, and to pay the same, together with the amount of the duty due from himself, to the person appointed under the act to collect and receive such duties.

(k) See *post*, *Vagrants*.

Masters of Ships to keep Muster Rolls, &c.]—By sect. 9 (k), every master or owner of any merchant ship, or other private ship or vessel, navigating the same, or such person as shall have the care thereof, shall keep a book by way of muster roll, or account of the ship's company, signed by himself, in which shall be entered his own christian and surname, and the christian and surnames of all the officers, seamen, and other persons employed in such ship, and over against each name the age, place of birth, and quality of such seaman or other person, and the time and place when he entered into the service of such ship; and such master, or owner, &c., shall continue to keep such book, by way of muster roll, during the whole course of the voyage, and shall from time to time enter therein when and where any such master, seaman, or other person shall be discharged from, or shall leave or desert such ship, and when and where any other officers and men shall be shipped on board, describing them in like manner as the persons who first entered on board, and when and where any of them received any hurt or damage, or were killed, slain, or drowned, or otherwise happened to die, together with a statement of the amount of wages due to them at the time of death or desertion, and of what clothes or other effects such deceased man shall have left on board; which account is directed to be in the form expressed in the schedule; a duplicate of which account shall, if required, be signed by the master or other person having the care of the ship, and shall be delivered to the collectors of the customs, or receivers of the duties under the act, at whatever port any such ship shall report or discharge her cargo; and all such duplicates for vessels not belonging to such port of discharge shall be forwarded by such receiver to the president and governors for the relief and support of sick, maimed and disabled seamen, to be by them transmitted to the trustees of the port to which such vessel shall belong. And in case any such master or other person shall neglect to keep such muster roll or account, or shall neglect or refuse to deliver such duplicate as aforesaid, and in case such receiver or collector shall neglect or refuse to transmit the duplicates, which shall be delivered to them as aforesaid, to the president and governors, he is liable to a penalty of 5*l*.

Masters to deduct Penalties from wages of Seamen.]—By sect. 10, the master of every ship coming within the provisions of the act

(k) And see 5 & 6 Will. 4, c. 19, s. 21, *post*, p. 1064.

is authorized to deduct, out of the wages of the seamen thereof, the amount of all forfeitures incurred by them, and is required to enter the same correctly into a book to be by him kept for that purpose, which must be signed by the master and the person next to him in the command of the ship, both of whom shall therein certify that it contains all the forfeitures which have been incurred by the seamen during the voyage; to the truth thereof the master must make oath, when required by the officer of the said president and governor in London, or of the trustees at any of the outports appointed to receive the monies payable in respect of the wages of merchant seamen; which oath the officer is authorized to administer. This book, or a true copy thereof, so signed and certified, must, within one calendar month after the ship's return from her voyage, be delivered to such officer by the master, together with extracts from the log book of the entries therein of the causes of the several forfeitures. Every master, who shall refuse or neglect to deliver any such account as thereby required, is liable to a penalty of 20*l*.

Penalty on Master for not swearing to truth of Muster Roll.—By *sect. 11*, the collectors or receivers may, by warrant under their hands, summon any master, or in his absence the owner of the ship, to appear at their office (so that the party summoned has not to travel above ten miles), and examine him as to the truth of the copy of such book or muster roll, and as to the number and times of service of all the several persons employed in the ship, who are chargeable with the duty imposed by the act. If the master fails to appear, or to make a full and true discovery of the matters so required of him, he is liable to a penalty of 10*l*.

Where Duties are to be Paid.—By *sect. 13*, the above duties of 2*s*. and 1*s*. per month are to be paid by the master at the port where the ship shall unload her cargo; and every master who makes default in such payments, and every collector and other officer of the customs acting contrary to the provisions of the act, are liable to a penalty of 10*l*.

Recovery and Application of Penalties.—By *sect. 15*, all penalties provided to be paid by any master or owner of any vessel, are recoverable before any magistrate of the port or place at which such vessel shall be reported, or shall discharge her cargo; and notice of any application for recovering any such penalty, which shall be served on the owner, master or commander, broker or agent of any such vessel, shall be deemed sufficient notice. And by *sect. 34*, all penalties are to be applied, one third part thereof to the informer,

and the other two third parts to be paid to the president and governors above mentioned, on account of the trustees of the port to which the vessel belongs. And all such penalties as do not exceed 20*l.* may be recovered upon information, on the oath of one witness, before any justice of the peace not residing more than ten miles from the place of abode of the person complained of. The justice may issue his warrant to bring before him every person charged with any offence against the act, and also a warrant of distress for non-payment of any penalty; and in default of distress, he may commit the offender to the common gaol of the city, town, or place within his jurisdiction, for three calendar months, or until he shall pay the same.

Masters of Vessels must enter into Agreements with every Seaman.—By 5 & 6 Will. 4, c. 19, (for consolidating the laws relating to merchant seamen, and for forming a registry of men engaged in that service,) it is enacted by *sects.* 2, 3, that no master of any vessel of the burthen of eighty tons, or upwards, shall carry any person to sea, as one of his crew, without a written agreement as to his wages, and the capacity in which he is to act, and the nature of the intended voyage, in the form specified in the schedule. And by *sect.* 4, if any master shall not comply with this enactment, he is liable to a penalty of 10*l.* for every seaman so carried out; if he shall neglect to cause the agreement to be distinctly read over to such seaman, he is liable to a penalty of 5*l.*; and if he neglects to deposit with the collector or comptroller of the customs a copy of such agreement, or shall wilfully deposit a false copy, he is liable to a penalty of 50*l.*

Seamen refusing to join the Ship.—By *sect.* 6, in case a seaman shall, after having signed such agreement, neglect or refuse to join the ship, on board of which he shall have engaged to serve, or shall refuse to proceed to sea in her, or shall absent himself therefrom without leave, any justice of the peace near to the place where the ship shall happen to be, upon complaint of the fact made upon oath by the master, mate, or owner, may by his warrant cause such seaman to be apprehended and brought before him; and in case such seaman shall not give a reason to the satisfaction of such justice for his neglect, refusal, or absence, the justice may commit him to the house of correction, to be kept to hard labour not exceeding thirty days; but, in case such seaman shall consent to join the ship and proceed on the voyage for which he shall have agreed, the justice may, at the request of the master, instead of committing him, cause

him to be conveyed on board the ship, or to be delivered to the master, for the purpose of proceeding on the voyage; and may also award to the master the reasonable costs incurred in the apprehension of the seaman, not exceeding in any case the sum of 40s., which shall and may be abated from the seaman's wages.

Penalty for temporary Absence from Duty.]—By sect. 7, if any seaman, after the ship, on board which he shall have agreed to serve, shall have left her first port of clearance, and before the period of his service shall be completed, shall wilfully and without leave absent himself from the ship, or otherwise from his duty, he shall (in all cases not of absolute desertion, or not treated as such by the master) forfeit out of his wages to the master or owner the amount of two days' pay for every twenty-four hours of such absence, and in a like proportion for any less period of time, or, at the option of the master, the amount of such expenses as shall have been necessarily incurred in hiring a substitute to perform his work; and in case any seaman, while he shall belong to the ship, shall, without sufficient cause, neglect to perform such duty as shall be reasonably required of him by the master, or other person in command of the ship, he shall be subject to a like forfeiture in respect of every such offence, and of every twenty-four hours continuance thereof. And in case any such seaman, after the ship's arrival at her port of delivery, and before her cargo shall be discharged, shall quit the ship, without a previous discharge or leave from the master, he shall forfeit to the master or owner one month's pay out of his wages. But no such forfeitures shall be incurred, unless the fact of the seaman's temporary absence, neglect of duty, or quitting the ship, shall be duly entered in the ship's log book, specifying truly the hour of the day at which the same shall have occurred, and the period during which the seaman was absent or neglected his duty; the truth of which entry the owner or master must, in all cases of dispute, substantiate by the evidence of the mate, or some other credible witness.

Amount of Forfeitures, when Seamen contract for the Voyage.]—By sect. 8, where the seaman shall have contracted for wages by the voyage, or by the run, and not by the month or other stated period of time, the amount of forfeitures to be incurred by him under the act shall be ascertained in manner following; (that is to say,) if the whole time spent in the voyage agreed upon shall exceed one calendar month, the forfeiture of one month's pay shall be accounted and taken to be a forfeiture of a sum of money bearing the same proportion to the whole wages as a calendar month shall bear to the

whole time spent in the voyage; and in like manner a forfeiture of two days' pay, or less, shall be accounted and taken to be a forfeiture of a sum bearing the same proportion to the whole wages, as the same period of time shall bear to the whole time spent in the voyage; and if the whole time spent in the voyage shall not exceed one calendar month, the forfeiture of one month's pay shall be accounted and taken to be a forfeiture of the whole wages contracted for; and if such time shall not exceed two days, the forfeiture of two days' pay shall be accounted and taken to be a forfeiture of the whole wages contracted for. The master is authorized to abate the amount of all forfeitures out of the wages of any seaman incurring the same.

Penalty for Desertion.—By sect. 9, every seaman, who shall absolutely desert the ship to which he shall belong, shall forfeit to the owner or master thereof all his clothes and effects which he may leave on board, and all wages and emoluments to which he might otherwise be entitled, provided the circumstances attending such desertion be entered in the log book at the time, and certified by the signature of the master and mate, or other credible witness; and an absence of a seaman from the ship, for any time within the space of twenty-four hours immediately preceding the sailing of the ship, without permission from the master, or for any period however short, under circumstances plainly showing that it was his intention not to return thereto, shall be deemed an absolute desertion. In case any such desertion shall take place in parts beyond the seas, and the master of the ship shall be under the necessity of engaging any seaman as a substitute for the deserter at a higher rate of wages, the owner or master shall be entitled to recover from the deserter, by summary proceeding in the same manner as wages are by the act made recoverable, any excess of wages which the owner or master shall so pay to such substitute.

Penalty for harbouring Deserters, &c.—By sect. 10, if any person shall, either on shipboard or on shore, harbour or secrete a seaman who shall have signed an agreement to proceed on a voyage to parts beyond the seas, and shall have deserted or absented himself without leave from his ship, knowing or having reason to believe him to be a deserter, or to be absent without leave; every person so offending shall, for every such seaman so harboured or secreted, forfeit and pay the sum of 10*l*. No debt exceeding 5*s*. incurred by any seaman shall be recoverable, until the voyage agreed for shall have been concluded. No keeper of a public house, or of a lodging

house for seamen, can withhold or detain any chest, bed, or bedding, clothes, tools, or other effects of any seaman, for any pretended debt alleged to have been contracted by him; and in case any such effects shall be so detained, any justice, upon complaint upon oath to be made by any such seaman, or on his behalf, may inquire into the matter, and if he shall see right, by warrant under his hand and seal may cause any such effects to be seized and delivered over to the seaman.

Period within which Wages are to be paid.—By sect. 11, the master or owner of every ship is required to pay every seaman's wages, if demanded, within the respective periods following; (that is to say,) if the ship shall be employed in trading coastwise, within two days after the termination of the agreement, or when the seaman shall be discharged; and if the ship shall be employed in trading otherwise than coastwise, then the wages shall be paid, at the latest, within three days after the cargo shall have been delivered, or within ten days after the seaman's discharge, whichever shall first happen; in either of which last-mentioned cases of payment being delayed, the seaman shall, at the time of his discharge, be entitled to be paid on account a sum equal to one-fourth part of the estimated balance due to him. In case any master or owner shall neglect or refuse to make payment in manner aforesaid, he shall for every such neglect or refusal forfeit and pay to the seaman the amount of two days' pay for each day, not exceeding ten days, during which payment shall without sufficient cause be delayed beyond the period at which such wages, or part wages, are required to be paid as aforesaid; for the recovery of which forfeiture the seaman shall have the same remedies, as he is by law entitled to for the recovery of his wages. But nothing in this clause contained shall extend to the cases of ships employed in the southern whale fishery, or on voyages, for which seamen, by the terms of their agreement, are compensated by shares in the profits of the adventure.

Masters to give Seamen Certificates on their Discharge.—By sect. 13, upon the discharge of a seaman from his ship, he is entitled to receive from the master a certificate of his service and discharge, specifying the period of service, and the time and place of the discharge, to be signed by the master; and if the master refuse to give such certificate, without reasonable cause, he is liable to a penalty of 5*l*.

Remedy for obtaining immediate Payment of Wages.—By sect.

14, if, after a seaman shall have been discharged from any ship three days, he shall be desirous of proceeding to sea on another voyage, and in order thereto shall require immediate payment of the wages due to him, any justice of the peace, on application from such seaman, and on satisfactory proof that he would be prevented from employment by delay, may summon the master or owner before him, and require cause to be shown why immediate payment of such wages should not be made. And if it shall appear to the satisfaction of the justice, that there is no reasonable cause for delay, he shall order payment to be made forthwith; and, in default of compliance with such order, such master or owner shall forfeit and pay the sum of 5*l*.

Mode of recovering Wages.—By sect. 15, in all cases of wages not exceeding 20*l*., which shall be due and payable to a seaman for his service in any ship, any justice of the peace residing near to the place where the ship shall have ended her voyage, cleared at the Custom House, or discharged her cargo, or near to the place where the master or owner shall be or reside, upon complaint on oath to be made to such justice by any such seaman, or on his behalf, may summon such master or owner to appear before him to answer such complaint; and upon the appearance of such master or owner,—or, in default thereof, on due proof of his having been so summoned,—the justice may examine upon oath the parties and their respective witnesses, touching the complaint and the amount of wages due, and make such order for payment as shall to him appear reasonable and just. In case such order shall not be obeyed within two days, the justice may issue a warrant of distress to levy the amount, and also the charges and expenses incurred by the seaman in the making and hearing of the complaint, as well as those incurred by the distress and in the enforcement of the justice's order; and in default of distress, the justice may cause the amount of such wages and expenses to be levied on the ship, in respect of the service on board which the wages are claimed, or the tackle and apparel thereof; and if such ship shall not be within the jurisdiction of such justice, then he may cause the party, upon whom the order for payment shall be made, to be apprehended and committed to the common gaol of the county, until payment shall be made of the amount of such wages, costs and expenses; and the award and decision of the justice shall be final and conclusive.

Masters to deliver Lists of their Crews on their return.—By

sect. 21, reciting the 9th section of the 4 & 5 Will. 4, c. 52 (*l*), the master of every ship bound to ports beyond the seas, is required not only to keep the book by way of muster-roll, as required by that act, but, on reporting his ship on her arrival at her port of destination in the United Kingdom, to deliver to the collector or comptroller of the customs at such port an account, signed by himself, of all the seamen and others (including apprentices) who shall have belonged to the ship at any time during her absence from the United Kingdom, according to the form set forth in the schedule. By *sect. 22*, the masters of ships in the home trade are also required to return similar lists. And by *sect. 23*, a similar return is to be made, in case the ship is lost, or sold abroad. These accounts and returns are (by *sect. 24*) to be certified and transmitted to the registrar of merchant seamen. Every owner or master of a ship making default in any of these particulars is liable to a penalty of 25*l*.

Punishment for common Assaults.]—By *sect. 38*, in the case of any assault or battery committed on board any merchant ship belonging to any subject of the United Kingdom in any place at sea, or out of his Majesty's dominions, any two justices of the peace, upon complaint of the party aggrieved, may hear and determine such complaint, and proceed and make such adjudication as by the 9 Geo. 4, c. 31, s. 27 (*m*) any two justices are empowered to do, subject to such provisos and limitations as are contained in that act with respect to the cases of assault and battery therein mentioned; and the fine or forfeiture to be imposed in any such case shall be payable to the merchant seamen's hospital, or institution, at or nearest to the port or place where such adjudication shall be made.

Leaving Seamen on Shore.]—By *sect. 40*, if any master of a ship belonging to any subject of the United Kingdom shall force on shore and leave behind, or shall otherwise wilfully and wrongfully leave behind on shore, or at sea, in any place in or out of his Majesty's dominions, any person belonging to his crew, before the return to, or arrival of, such ship in the United Kingdom, or before the completion of the voyage for which such person shall have been engaged, whether such person shall have formed part of the original crew, or not; every person so offending shall be deemed guilty of a *Misdemeanor*, punishable by fine or imprisonment, or both.

Discharging or leaving Seamen abroad.]—By *sect. 41*, seamen are not to be discharged abroad, without the previous sanction in

(*l*) See *ante*, p. 1057.

(*m*) See *ante*, p. 74.

writing of the governor, lieutenant governor, secretary, or other officer appointed in that behalf by the government there, or of the chief officer of the customs, in any colony; nor at any other place, without the sanction of the British minister or consul, or, in his absence, of two respectable merchants. Nor, by *sect. 42*, is any seaman to be left abroad, on the plea of incapacity to proceed, desertion, or disappearance, without a similar authority.

Recovery of Penalties.—By *sect. 53*, all penalties and forfeitures not exceeding 20*l.*, for the recovery whereof no specific mode is provided, may be recovered, with costs, at the suit of any person, by information and summary proceeding before any one justice of the peace residing near to the place where the offence shall be committed, or where the offender shall be, by distress and sale of the offender's goods, or by commitment of the offender for non-payment of the amount; and all penalties for which no specific application is provided are to be paid, one moiety to the informer, and the residue to be divided between Greenwich Hospital and the merchant seamen's hospital or institution at the port to which the ship shall belong, and if there shall be none such, then the whole of the residue to be paid to Greenwich Hospital. The justice, however, has power to mitigate any penalty, so that it be not reduced below one half of its original amount. All proceedings must be commenced within two years after the commission of the offence, if the same shall have been committed at or beyond the Cape of Good Hope or Cape Horn, or within one year, if committed on the European side of those limits, or within six calendar months after the return of the offender or the complaining party to the United Kingdom.

1. *Information on 5 & 6 Will. 4, c. 19, ss. 2 and 4, against a Master for employing a Seaman, without having first entered into a written Contract as to Wages, &c. (n).*

Middlesex,) The information and complaint of A. B. of the parish of —, in
to wit.) the county of —, mariner, made and exhibited before J. P.
esquire, one of her Majesty's justices of the peace in and for the said county, on the
— day of —, in the year of our Lord 1843, at — in the said county; who upon
his oath saith, that C. D. late of —, mariner, on &c., at &c., being then and there
master and commander of a certain ship called the *Britannia*, belonging to E. F. a
subject of her Majesty Queen Victoria, and then bound on a certain voyage, and
trading from the port of London to certain parts beyond the seas, to wit, to the port of
Kingston, in the Island of Jamaica, did hire and carry out to sea on the said voyage
one G. H. as a seaman and one of his crew, (and not the apprentice of the said C. D.),
without having first entered into an agreement in writing with the said G. H. specifying
what monthly or other wages the said G. H. was to be paid for the said voyage, con-

trary to the form of the statute in such case made and provided ; whereby the said C. D. hath forfeited for his said offence the sum of 10*l.*; and thereupon the said A. B. prayeth that the said C. D. may be summoned to answer the premises before one of her Majesty's justices of the peace in and for the said county.

A. B.

Sworn before me, J. P.

2. *Information of a Seaman against the Master of a Ship, under the 11th section, for refusing to pay him his Wages (o).*

County of } The information and complaint of A. B., of —, in the county of —, —. } late a seaman on board the ship called the Britannia, exhibited before me, J. P., esquire, one of her Majesty's justices of the peace in and for the county of —, and residing near to the place where the said ship ended her voyage, this — day of —, in the year of our Lord 1843 ; who being sworn, on his oath, says, that on the — day of —, in the year of our Lord 1842, he was hired by C. D. of — in the county aforesaid, master of the said ship called the Britannia, to serve him in the merchant service as a seaman, and as one of the crew on board the said ship, from the port of — in England to the port of — beyond the seas, for the wages of £— per month, and that he the said A. B. has duly performed the said service and hiring for the term of — months, and was, on the — day of — last, discharged from the said ship by the said C. D. at —, in the said county of —, when the sum of £— became and was justly due to the said A. B. for his wages after the rate aforesaid ; and that although ten days have elapsed from the time of the said discharge, he the said C. D. hath neglected and refused, and still neglects and refuses, to pay the said sum of £— to the said A. B., contrary to the form of the statute in such case made and provided : And thereupon the said A. B. prays that the said C. D. may be summoned before me, the said justice, to answer the said complaint.

A. B.

Taken before me, J. P.

3. *Summons thereon.*

County of } To the constable of —, in the said county.
—.

Whereas information and complaint have been made unto me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county of —, upon the oath of A. B. of —, in the county of —, late a seaman on board the ship Britannia, that, &c. [*here set forth the complaint as in the above information.*] These are therefore to command you forthwith to summon the said C. D. to appear before me, at —, in the said county of —, on —, the — day of — instant, at the hour of —, in the forenoon of the same day, to show cause why the said wages should not be paid. And be you then there to certify what you shall have done. Dated this — day of —, in the year of our Lord 1843.

4. *Order for Payment of the Wages.*

County of } Whereas information and complaint have been made unto me, J. P.
—, } esquire, one of her Majesty's justices of the peace in and for the said

(o) See *ante*, p. 1062, sections 11, 15.

county of —, and residing near to the place where a certain ship called the Britannia hath ended her voyage, upon the oath of A. B. of —, in the county of —, late a seaman on board the said ship, that on the — day of —, in the year of our Lord 1842, he the said A. B. was hired by C. D. of, &c. [*here state the complaint as in the information, down to the words, "contrary to the form of the statute in such case made and provided" inclusive*]; and whereas the said C. D. having appeared before me, in pursuance of my summons for that purpose, hath not proved to me that the said wages have been duly paid unto the said A. B., nor hath showed to me any just cause why the same should not be paid; [*or if the master fails to obey the summons, then, instead of reciting his appearance before the justice, say, "and whereas it appears to me, upon the oath of E. F., constable of — aforesaid, that he the said E. F., by virtue of my summons to him directed, did duly summons the said C. D. to appear before me, at a certain time and place therein specified, to show cause why the said wages should not be paid, and the said C. D. hath neglected to appear according to the said summons, and hath not shown any cause why the said wages should not be paid;"*] I, therefore, having duly examined into the truth and matter of the said complaint, by the oaths of the said A. B., and of the witnesses produced by him, and upon due consideration had thereof, do hereby adjudge, determine, and order, that he the said C. D., upon due notice hereof, do pay, or cause to be paid, to him the said A. B. the sum of £—, which appears to me to be just and reasonable, as and for the wages of the said A. B. so due unto him as aforesaid. Given under my hand and seal the — day of —, in the year of our Lord 1843.

J. P. (L. s.)

4. Warrant of Distress for Non-payment (p).

County of } To the constable of —.
—.

Whereas A. B., of —, in the county of —, late a seaman on board a ship called the Britannia, has complained on oath unto me, J. P., esquire, one of her Majesty's justices of the peace in and for the county of —, and residing near to the place where the said ship ended her voyage, that on the — day of —, in the year of our Lord 1842, he was hired by C. D., of, &c. [*as in the information, down to the words "contrary to the form of the statute," &c. inclusive*]: And whereas the said C. D. having appeared before me, &c. [*as in the above order, reciting it in the past tense*]: And whereas it appears to me, that the said C. D., on the — day of — now last past, had due notice of my said order, and that the said sum of £— was then duly demanded of him by the said A. B., but that he the said C. D. did not then pay, nor has yet paid the same, nor any part thereof: These are therefore to command you, the said constable, to make distress of the goods and chattels of the said C. D., and if within the space of five days next after such distress by you made, the said sum of £—, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by the sale thereof, that you pay the said sum of £— unto the said A. B., rendering the overplus (if any there be), after deducting the sum of £— for the costs incurred by the said A. B. in the making and hearing of the said complaint, as well as those incurred by the distress and sale and in the

enforcement of my order, unto the said C. D. : And in case sufficient distress shall not be found for payment and satisfaction of such wages, costs, and expenses as aforesaid, that then you do certify the same to me, together with the return of this warrant. Given under my hand and seal, the — day of —, in the year of our Lord 1843.

5. *Warrant of Distress on the Ship, where other sufficient Distress cannot be found.*

County of } To the constable of —.

Whereas A. B., of —, in the county of —, late a seaman on board a certain ship called the Britannia, has complained unto me, J. P., esquire, one of her Majesty's justices of the peace in and for the county of —, and residing near to the place where the said ship has ended her voyage, that on the — day of —, in the year of our Lord 1842, he was hired by C. D., of, &c. [*as in the information down to the words "contrary to the form of the statute," &c. inclusive*] : And whereas the said C. D. having appeared before me, &c. [*as in the above order, p. 1067, reciting it in the past tense*] : And whereas it appears to me, that the said C. D., on the said — day of — now last past, had due notice of my said order, and that the said sum of £ — was then duly demanded of him by the said A. B., but that he the said C. D. did not then pay, nor has yet paid the same, nor any part thereof : And whereas on the — day of —, I, the said justice, did issue my warrant to the constable of —, to make distress of the goods and chattels of the said C. D., and to levy the said sum of £ —, together with the costs, according to the directions of the statute in such case made and provided : And whereas it duly appears unto me, the said justice, as well upon the oath of E. F., the constable of —, as otherwise, that he, the said constable of —, has used his best endeavours to levy the said sum of £ — on the goods and chattels of the said C. D., but that no sufficient distress can be so found whereon to levy the same : These are therefore to command you, the said constable, to levy the amount of the said sum of £ —, together with the said sum of — for the charges and expenses incurred by the said A. B. in the making and hearing of the said complaint, and in the enforcement of my said order, on the said ship or vessel called the Britannia, in respect of the service on board which the said wages have been so claimed, or on any of the tackle, furniture, or apparel of the said ship ; and if within the space of five days next after such distress be made, the said two several sums of £ — and £ —, together with the reasonable charges of taking the said distress, shall not be paid, that then you do sell the said ship, or the tackle, furniture and apparel thereof so by you distrained ; and out of the money arising by such sale, that you pay the said several sums of £ — and £ — unto the said A. B., rendering the overplus thereof (if any) on demand, unto the said C. D., the reasonable charges of taking, keeping, and selling the said distress being thereout first deducted. Given under my hand and seal, the — day of —, in the year of our Lord 1843.

J. P. (L. S.)

Search Warrant.

IN general cases.]—By 7 & 8 Geo. 4, c. 29, for consolidating and amending the laws relating to larceny and other offences connected therewith, it is enacted by *sect.* 63, that if any credible witness shall

prove upon oath before a justice of the peace, a reasonable cause to suspect that any person has in his possession, or on his premises, any property whatsoever, on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of that act (except only the offence of angling in the day time), shall have been committed; the justice may grant a warrant to search for such property, as in the case of stolen goods. This enactment therefore extends the power of issuing a search warrant to cases of *misdemeanor*, and offences punishable under that act by *summary conviction*; which the magistrate was only empowered to do previously in cases of felony. It is not necessary, for the magistrate's justification in issuing the warrant, that the party applying for it should swear, *positively*, that a felony has been *actually committed*; it is enough, if he swears that he has reason to suspect that the property has been stolen (*p*); and the party who makes the suggestion, if he has no reasonable ground of suspicion, is alone responsible to the party grieved.

In cases of Bankruptcy.—By 6 Geo. 4, c. 16, s. 29, also, in all cases where it shall be made to appear to the satisfaction of any justice, that there is reason to suspect and believe that property of a bankrupt is concealed in any house, or other place, not belonging to such bankrupt, the justice may grant a search warrant to the messenger (*q*) under the bankruptcy, who may execute the same in like manner as the execution of a search warrant for property reported to be stolen or concealed. But the magistrate's power in this respect is now in a great measure superseded by the recent statute of 5 & 6 Vict. c. 122, s. 30, which enables any of the Courts of Bankruptcy to grant a search warrant in any case of this description.

Requisites of Warrant.—The warrant ought to be directed to a constable or other public officer, and not to a private person; and it should command that the goods found, together with the party in whose custody they are taken, be brought before some justice of the peace, in order that the goods may be disposed of as the law directs. It is proper, also, except under very special circumstances, that the warrant should express the search to be made in the *day time* (*r*), though where there is positive proof of stolen goods being hid in some particular place, and the magistrate has reason to believe that they will speedily be removed, it seems that there is no need to wait

(*p*) *Else v. Smith*, 1 Dow. & R. 97.

(*q*) *Sty v. Stevenson*, 2 C. & P. 464.

(*r*) 2 Hale, 150.

for the return of day-light to execute the warrant; for then the goods and the offender may both be gone. The warrant, however, ought expressly to confine the search to *those particular places*, which the party swears he has reason to suspect contain the property; for a general warrant to search *all suspected houses* for stolen goods, is illegal on the face of it (s).

Execution of the Warrant.—The officer must strictly observe the instructions of the warrant; for a warrant directing a search in a particular house only, will not justify a search in another; nor will a warrant to seize only stolen sugar, justify him in seizing tea (t). But if the tea, or other articles, seized by the officer would be likely to furnish evidence of the identity of the articles actually stolen and mentioned in the warrant, then the officer would have reasonable ground for seizing them; for a constable is not necessarily a trespasser for seizing articles not mentioned in the warrant (u). If the door of the house in which the officer is authorized to make the search be shut, and those within refuse to open it, after demand made by the officer for that purpose, he may break it open to make the search, whether the stolen goods are found in them, or not; though if they are not found, the party at whose instance the search was made is answerable (v).

Return of the Warrant.—If it appear, on the return of the warrant, that the goods seized by the officer were stolen, they should not be delivered to the owner, but be deposited in some legal custody by the authority of the magistrate; for the party robbed can only have restitution by indicting and convicting the offender (x). And, with respect to the party in whose possession the stolen goods were found, if he was ignorant of the theft, he must of course be discharged; but the magistrate should bind him over to give evidence as a witness against him that stole them; and if it appear that he knew they were stolen, the magistrate must then either commit him, or bind him over to answer for the felony (y).

1. Form of a Search Warrant for Stolen Goods.

County of }
 ——— } To the constable of ———, in the county of ———.

Whereas it appears to me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, by the information on oath of A. B., of ———, in the county

(s) 2 Hawk. c. 13, ss. 10, 17.

(t) *Price v. Messenger*, 2 Bos. & P. 158.

(u) *Crosier v. Cundey*, 6 B. & C. 232.

(v) 2 Hale, 151. And see *ante*, p. 38.

(x) *Ibid.*

(y) 2 Hale, 152.

of — aforesaid, that he hath good cause to suspect, and doth suspect, that the following goods, to wit, — [*specifying the goods*] were, on the — day of —, instant, by some person or persons unknown, feloniously stolen, taken, and carried away out of the house of the said A. B., at — aforesaid; and that the said A. B. hath also good cause to suspect, and doth suspect, that the said goods, or part thereof, are now concealed in the dwelling house of C. D., of —, in the said county, pawnbroker: These are therefore, in her Majesty's name, to authorize and require you, with necessary and proper assistance, to enter in the day time into the dwelling house of the said C. D., at — aforesaid, and there diligently to search for the said goods: And if the same, or any part thereof, shall be found upon such search, that you bring the goods so found, and also the body of the said C. D., before me, or some other justice of the peace in and for the county aforesaid, to be disposed of and dealt with according to law. Given under my hand and seal, at —, in the said county, on the — day of —, in the year of our Lord 1843.

J. P. (L. s.)

2. *Search Warrant, where a Bankrupt's Property is concealed (z).*

County of }
—, } To T. S., of —, &c.

Whereas it appears to me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county of —, by the information on oath of A. B., of —, that there is reason to suspect and believe that property of C. D., a bankrupt, is concealed in the dwelling house of E. F., at —, in the county aforesaid: These are therefore, by virtue of the statute in such case made and provided (a), to authorize and require you, with necessary and proper assistants, to enter in the day time into the said dwelling house of the said E. F., at — aforesaid, in the county aforesaid, and there diligently to search for the said property of the said bankrupt: And if any of such property shall be found upon such search, that you seize the same, and make known to me what you have done herein, in order that such property may be disposed of and dealt with according to law. Given under my hand and seal, at — aforesaid, in the said county, this — day of —, in the year of our Lord 1843.

J. P. (L. s.)

Sedition.

SEDITION includes all offences, against the king and the government, of like tendency with treason, but without any such direct intent or overt act of the party formed or executed, as to bring it within the more serious offence. Thus, all contemptuous, indecent, or malicious observations upon the person of the king, or upon his government, whether by writing, or speaking, or by tokens, calculated to lessen him in the esteem of his subjects, to weaken his government, or to raise jealousies of him amongst the people, will fall under this offence; as well as all direct or indirect acts or threats

(z) See *ante*, p. 1069.

(a) 6 Geo. 4, c. 16, s. 29.

tending to overcome his measures, or disturb the course of his government, not amounting to overt acts of high treason; all which contempts are highly criminal at common law, and are punishable with fine and imprisonment (a).

There are some particular acts of sedition, however, made more highly penal by statute—as the administering or taking an *unlawful oath*—belonging to *unlawful combinations* and confederacies—and attending meetings for the purpose of being *trained to the use of arms*, without lawful authority; for which see **Combinations, Military Training, Oaths**.

And see also **Riot**.

Servants and Workmen.

I. AS TO SERVANTS GENERALLY.

1. *Stealing and Embezzlement by.*
2. *False Characters and Representations.*
3. *Carelessly setting Houses on Fire.*

II. AS TO SERVANTS IN HUSBANDRY, LA-

BOURERS, WORKMEN, AND ARTIFICERS.

1. *Servants in Husbandry.*
2. *Labourers, Artificers, and Workmen in general.*
3. *Artificers and Workmen in particular Trades.*

I. AS TO SERVANTS GENERALLY.

A MAGISTRATE has no peculiar jurisdiction over a *domestic or menial* servant; the statute of 5 Eliz. c. 4, which gave jurisdiction to justices of the peace as to servants employed in husbandry, expressly excluding from such jurisdiction those “retained in household” with any nobleman, gentleman, or others (b); an exclusion which is often productive of inconvenience both to master and servant, whose disputes in regard to wages would be settled much more satisfactorily by a magistrate, than by an action at law, or a proceeding in a Court of Requests. But, although it does not come within the province of a magistrate to adjudicate in these matters, it may be useful to observe, that if a servant is discharged without notice or warning, he is entitled to a month’s wages beyond the wages due for the period of actual service, unless he is dismissed for misconduct; as for absenting himself without leave (c), or refusing to obey his master’s orders (d), or for any description of moral misconduct, pecuniary or otherwise, or any habitual neglect of duty (e).

(a) 1 Hawk. c. 65, s. 6; 4 Bl. Com. 147; 1 East, P. C. 76.

(b) *Kitchin v. Shaw*, 6 Ad. & E. 729.

(c) *Robinson v. Hindman*, 3 Esp. 235.

(d) *Spain v. Arnott*, 256.

(e) *Call v. Browncker*, 4 C. & P. 518; *Atkin v. Acton*, 4 C. & P. 81.

1. *Stealing and Embezzlement by.*

By 7 & 8 Geo. 4, c. 29, s. 46, if any clerk or servant shall *steal* any chattel, money, or valuable security, belonging to, or in the possession or power of, his master;—*Transportation not exceeding fourteen years, nor less than seven, or imprisonment not exceeding three years, with or without whipping.*

By *sect. 47*, if any clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, shall, by virtue of such employment, receive or take into his possession any chattel, money, or valuable security, for, or in the name, or on the account of his master, and shall fraudulently *embezzle* the same, or any part thereof; the offender shall be deemed to have *feloniously stolen* the same from his master, although it was not received into the possession of such master, otherwise than by the actual possession of his clerk, servant, or other person so employed; and is liable to the same punishment as above.

The servant or clerk need not form part of his master's family, in order to be considered as his servant, for the purposes of larceny. A tradesman's book-keeper, therefore, though not residing with his master, is equally within the statute (*g*), as well as a person only hired temporarily for a special purpose (*h*).

2. *False Characters and Representations.*

Giving false Characters.—By 32 Geo. 3, c. 56, s. 1, if any person shall *falsely personate* any master, or mistress, or the executor, administrator, wife, relation, housekeeper, steward, agent, or servant of any such master and mistress, and shall either personally or in writing give any false, forged, or counterfeited character to any person offering to be hired as a servant, he is liable to a penalty of 20*l*.

By *sect. 2*, if any person shall knowingly or wilfully pretend, or falsely assert in writing, that any servant had been hired or retained for any period of time whatsoever, or in any station or capacity whatsoever, other than that for which, or in which, he or she shall have hired or retained such servant, he is also liable to a penalty of 20*l*.

By *sect. 3*, if any person shall knowingly and wilfully pretend, or falsely assert in writing, that any person was discharged, or left his or her service, at any other time than that at which he or she was dis-

(*g*) *R. v. Paradise*, cit. 1 Leach, 523.

(*h*) *R. v. Stock*, 1 Mood. C. C. 87.

charged on actually left such service, or that any such servant had not been hired or employed in any previous service, contrary to the truth; a like penalty of 20*l*.

False representations by the Servant.—By sect. 4, if any person shall offer himself or herself as a servant, asserting or pretending that he or she hath served in any service, in which such servant shall not actually have served, or with a false, forged, or counterfeited certificate of his or her character, or shall in anywise add to, or alter, efface, or erase any word, matter or thing contained in or referred to in any certificate given to him or her by his or her last or former actual master or mistress, or by any other person duly authorized by such master or mistress to give the same; he is also liable to a penalty of 20*l*.

By sect. 5, if any person, having been before in service, shall, when offering to hire himself or herself as a servant, falsely and wilfully pretend not to have been hired or retained in any previous service as a servant; penalty 20*l*.

Recovery and Application of Penalties.—By sect. 6, the above penalties may be recovered by the oath of one credible witness, before two justices, one moiety to the informer, and the other to the poor of the parish wherein the offence shall have been committed. If the party shall not immediately pay the penalty, together with the sum of 10*s*. for costs, or shall not give notice of appeal, and enter into such recognizance as is therein provided, the justices may commit the offender, not exceeding three months, nor less than one.

By sect. 7, the informer is declared to be a competent witness, notwithstanding he is entitled to a part of the penalty.

By sect. 8, offenders discovering their accomplices before information are indemnified.

By sect. 9, there is a general form of conviction; and by sect. 10, an appeal is given to the quarter sessions. No proceedings are to be quashed for want of form, or removed by *certiorari*.

1. *Conviction of a party, under Sect. 1, for personating a Master and giving false*

Character of a Servant (1).

Middlesex, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord —, A. B., of, &c. is convicted before us, two of her Majesty's
justices of the peace in and for the county of Middlesex, for that one C. D. having
offered himself to be hired into the service of W. O., of, &c. as a footman, he, the said

(1) See *ante*, p. 1073. The form of conviction, as given by the act, is very imperfect, there being no adjudication as to the penalty. See *Conviction, ante*, p. 195.

A. B., did on the — day of —, at —, in the said county, falsely personate one X. Y., the late master of the said C. D., and did then and there personally give to the said W. O. a false and counterfeited character of the said C. D., contrary to the form of the statute in such case made and provided: And we, the said justices, do therefore declare and adjudge that the said A. B. hath forfeited for his said offence the sum of 20*l.*, to be distributed according to the form of the statute in such case made and provided. Given under our hands and seals the day and year first above mentioned.

J. P. (L. S.)

W. P. (L. S.)

2. *Conviction of a Party, under Sect. 2, for falsely asserting that another had been in his Service (k).*

Middlesex, } Be it remembered, &c. [as in the above precedent], for that the said
to wit. } A. B., on, &c., at, &c., did knowingly and wilfully pretend and falsely assert in writing to W. O., of, &c., at, &c., that one C. D. had been hired and retained by him the said A. B. as a servant, in the situation and capacity of a footman, and had served the said A. B. for the space of two years as such footman; whereas, in truth and in fact, the said C. D. had never been hired or retained by the said A. B. as such footman, nor had served the said A. B. in that capacity, or in any other capacity as a servant; contrary to the form of the statute in such case made and provided: And we do declare, &c. [as in the former precedent].

3. *Conviction of a Party, under Sect. 3, for falsely asserting that the Servant was discharged at a particular time (k).*

Middlesex, } Be it remembered, &c. [as in the first precedent], for that one C. D.
to wit. } having offered himself to be hired into the service of W. O., of, &c., as a footman, he the said A. B., on, &c., at, &c., did knowingly and wilfully pretend [or "falsely assert in writing"] to W. O., of, &c., that the said C. D., who had formerly been a servant of the said A. B., was discharged by the said A. B., and left his service on the — day of — last; whereas in truth and in fact the said C. D. was discharged by and had left the service of the said A. B. on the — day of —, in the year of our Lord —, contrary to the form of the statute, &c. [as in the first precedent].

4. *Conviction of a Servant, under Sect. 4, for offering himself with a false Certificate of Character (l).*

Middlesex, } Be it remembered, &c. [as in the first precedent], for that the said
to wit. } C. D., on, &c., at, &c., did offer himself as a servant to W. O., of, &c., with a false, forged, and counterfeited certificate of his character, purporting to be the certificate of one E. F., and stating that, &c., whereas in truth and in fact the same was not the certificate of the said E. F., and whereas in truth and in fact, &c. [negating the statement in the certificate], contrary to the form of the statute, &c. [conclude as in the first precedent].

3. *Carelessly setting Houses on Fire.*

By 14 Geo. 3, c. 78, s. 84, if any menial or other servant, through negligence or carelessness, shall fire, or cause to be fired, any dwell-

(k) See ante, p. 1073.

(l) See ante, p. 1074.

ing-house, or out-house, or houses, or other buildings; the offender, on conviction by the oath of one credible witness before two justices, shall forfeit and pay the sum of 100*l.* unto the churchwardens or overseers of the parish where such fire shall happen, to be distributed amongst the sufferers by the fire in such proportions as to the churchwardens shall seem just; and in default of immediate payment, after being lawfully demanded by such churchwardens, the servant may be committed for eighteen months to hard labour.

By *sect. 95*, the conviction is not removable by *certiorari*. By *sect. 96*, an appeal is given to the next sessions, upon entering into a recognizance (by *sect. 97*) with two sureties, to try such appeal; by *sect. 98*, parishioners are competent witnesses; and by *sect. 99*, prosecutions must be commenced within six calendar months.

1. *Conviction of a Servant, under the above Statute, for carelessly setting a Dwelling-house on Fire.*

Middlesex, } Be it remembered, that on the — day of —, at —, in the said
to wit. } county, A. B., of —, in the said county, personally came before us,
two of her Majesty's justices of the peace in and for the county aforesaid, and informed
us, that C. D., a servant of the said A. B., did on the — day of — instant,
whilst he continued to be such servant, at —, in the said county, through the neg-
ligence and carelessness of the said C. D., cause to be fired a certain dwelling-house
of the said A. B., situate in — street, in the parish of —, in the county aforesaid,
contrary to the form of the statute in such case made and provided: Whereupon the
said C. D., after being duly summoned to answer the said charge, appeared before us,
on the — day of —, at —, in the said county, and having heard the charge
contained in the said information, declared he was not guilty of the said offence;
whereupon we, the said justices, did proceed to examine into the truth of the charge
contained in the said information, and on the — day of — aforesaid, at —
aforesaid, one credible witness, to wit, E. F., of, &c., upon his oath deposed and saith,
in the presence and hearing of the said C. D., that within six calendar months next
before the said information was laid before us the said justices by the said A. B., to
wit, on the — day of —, in the year aforesaid, at —, in the county aforesaid
[here state the evidence, and as nearly as possible in the words used by the witness; and
if more than one witness be examined, then state the evidence given by each]: Therefore,
it manifestly appearing to us, the said justices, that the said C. D. is guilty of the offence
charged upon him in the said information, we, the said justices, do hereby convict
him of the offence aforesaid, and do declare and adjudge that he the said C. D. hath
forfeited for his said offence the sum of 100*l.* of lawful money of Great Britain, and
that he do forthwith pay the same to G. H., one of the overseers of the said parish of
—, where the said fire did happen, to be distributed by the said overseers according
to the form of the statute in that case made and provided. Given under our hands
and seals, this — day of —, in the year of our Lord 1843.

J. P. (1. s.)

W. P. (2. s.)

2. *Commitment under the above Statute, for not Paying the Penalty.*

Middlesex, } To the constable of —, in the said county, and to the keeper of the
to wit. } house of correction at —, in the said county.

Whereas C. D., late a servant of W. B., of, &c. was on this day duly convicted before us, J. P. and W. P., esquires, two of her Majesty's justices of the peace in and for the said county, for that the said C. D. did, on the — day of — instant, whilst he continued a servant of the said A. B., at —, in the said county, through the negligence and carelessness of him the said C. D., cause to be fired a certain dwelling-house of the said A. B., situate in — street, in the parish of —, in the county aforesaid, contrary to the statute in such case made and provided: And we, the said justices, did thereupon adjudge that the said C. D. hath forfeited for his said offence the sum of 100*l.* of lawful money of Great Britain, and that he should forthwith pay the same to G. H., one of the overseers of the said parish where the said fire did happen, to be distributed by the said overseers according to the form of the statute in that case made and provided: And whereas the said C. D. being so committed as aforesaid, and being now required to pay the said sum, hath not paid the same, or any part thereof, but herein hath wholly made default: These are therefore to command you, the said constable, to take the said C. D., and him safely convey to the house of correction at — aforesaid, and there to deliver him to the said keeper thereof, together with this warrant: And we do hereby command you, the said keeper, to receive the said C. D. into your custody, in the said house of correction, and there to imprison and keep him to hard labour for the space of eighteen lunar months, unless the said sum of 100*l.* shall be sooner paid: And for your so doing this shall be your sufficient warrant. Given under our hands and seals, this — day of —, in the year of our Lord 1843.

J. P. (L. s.)

W. P. (L. s.)

II. AS TO SERVANTS IN HUSBANDRY, LABOURERS, WORKMEN, AND ARTIFICERS.

1. *Servants in Husbandry.*

And see *post*, “*Labourers and Workmen in general.*”

Who compellable to serve.]—By 5 Eliz. c. 4, s. 7, in order to prevent idleness among the labouring classes, every person between the ages of twelve and sixty, who is not previously retained in some employment, or entitled to any of the exemptions specified in the statute, is compellable to serve in husbandry. And by *sect.* 24, also, women between the ages of twelve and forty are compellable to go to service. By *sect.* 8, any master discharging a servant without reasonable cause, to be proved by two witnesses, and without a quarter's warning, incurs a penalty of 40*s.*

Punishment for not performing their Duty.]—By *sect.* 9, a servant refusing to perform his duty, or departing from his service, may be committed by two magistrates, until he shall become bound to serve and continue in his service.

Penalty for departing without a Testimonial.—By sect. 10, none of such persons retained in husbandry, or in any other employment mentioned in the act, shall depart from one city, town, parish, hundred, or county where he last served, to serve in any other, without a testimonial under the seal of the constable or other head officer, and of two other householders where he last served; which must be registered by the minister of the parish where the master dwells.

No Servant to be retained without a Testimonial.—By sect. 11, no person departing out of one service shall be retained in any other, without showing such testimonial to the chief officer of the town, or to the constable, curate, churchwarden, or other head officer, upon pain of imprisonment till he procure a testimonial; which if he cannot do in twenty-one days, he shall be treated as a vagabond. Every person retaining such servant, without his showing such testimonial, incurs a penalty of 5*l*. And if any one be taken with a counterfeit testimonial, he may be whipped as a vagabond.

Artificers compellable to work in Harvest.—By sect. 22, in the time of hay or corn harvest, the justices of peace may cause all such artificers and other persons as be meet for labour, to serve by the day, for the mowing, reaping, shearing, getting or inning of corn, grain and hay, according to the skill and quality of the person. And no such person shall refuse to do this service, on pain of imprisonment in the stocks for two days and one night. And the constable of the town, or other head officer, on complaint to him made, is required to set him in the stocks accordingly, under the penalty of 40*s*.

Labourers fleeing into another County.—By sect. 47, if any servant of husbandry, or other occupation therein specified, flee into another shire, the justices of peace may issue a writ of *capias*, directed to the sheriff of the county to take his body, returnable when they please; and if taken on such process, the servant may be put in prison, till he shall find sufficient surety to serve the master from whom he fled.

By sect. 39, one moiety of all penalties is to go to the crown, and the other moiety to the informer; and all offences may be determined by two justices, except (by sect. 45) where they arise within any city or town corporate, in which case they are to go to the use of the city or town, in the same manner as other fines or forfeitures under any grant or charter.

2. Labourers, Artificers, and Workmen in general.

As to the jurisdiction of a magistrate over masters and apprentices, see **Apprentices**.

As to the employment of children in factories, see **Factories**.

As to labourers on the River Thames, see *post*, **Thames**.

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| <ol style="list-style-type: none"> 1. Complaints as to Wages, Misconduct, or Ill-treatment. 2. Payment of Wages otherwise than in Money. | <ol style="list-style-type: none"> 3. Arbitration of Disputes between Masters and Workmen. 4. Combinations of Workmen. |
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1. Complaints as to Wages, Misconduct, or Ill-treatment.

Disputes as to Wages.—By 20 Geo. 2, c. 19, s. 1, all complaints, differences, and disputes, which shall happen and arise between masters and servants in *husbandry*, who shall be hired for one year (*n*) or longer, or which shall happen or arise between masters and *artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers* (*o*), employed for any certain time, or in any other manner, shall be heard and determined by one or more justice or justices of the peace of the county or place where the master shall inhabit; who are empowered to examine upon oath any such servant, artificer, or other labourer, or any other witness, touching any such complaint, difference, or dispute, and to make such order for payment of so much wages to the servant, artificer, or other labourer, as to the justice shall seem just and reasonable; provided the sum in question do not exceed 10*l.* with regard to any servant, nor 5*l.* with regard to any artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer. In case of refusal or nonpayment of any sums so ordered, by the space of twenty-one days (*p*), the justice and justices may issue his warrant to levy the same by distress and sale.

Power to punish Servant for Ill-behaviour, and to discharge him, if ill-treated.—By *sect. 2*, upon complaint made, upon oath, by any master, against any such servant, artificer, or labourer, concerning any misdemeanor, miscarriage, or ill-behaviour in his service or employment, the justice may hear, examine, and determine the same,

(*n*) Or, by 31 Geo. 2, c. 11, s. 3, though hired for less than a year.

(*o*) The provisions of this act are not confined to labourers in the particular employments specified in the statute, but are applicable to other labourers in any

other trade or business, who may be employed exclusively in the service of any person for any certain time; *Lowther v. Earl of Radnor*, 8 East, 113.

(*p*) But see 4 Geo. 4, c. 34, s. 5, *post*, p. 1081.

and punish the offender by commitment to the house of correction, there to remain, and be corrected, and held to hard labour not exceeding one calendar month; or otherwise, by abating some part of his wages, or by discharging him from his service or employment. In like manner, upon any complaint upon oath by any such servant, artificer, or other labourer, against his master or employer, concerning any misuse, refusal of necessary provision, cruelty, or other ill-treatment towards him, the justice may summon the master or employer to appear before him, and may examine into the matter of such complaint, whether the master or employer shall appear or not, if it be proved on oath that he has been duly summoned; and upon proof thereof made upon oath, to the satisfaction of the justice, he may discharge, under his hand and seal, the servant, artificer, or labourer, from his service and employment.

Appeal.]—By sect. 5, an appeal is given, except from an order of commitment, to the next quarter sessions; and (by sect. 6) no *certiorari* is allowed.

By 27 Geo. 2, c. 6, s. 2, the provisions in the above act are extended to *timbers* and *miners* in the *stannaries* in the counties of *Devon* and *Cornwall*.

Absence from Service, or other Misconduct.]—By 4 Geo. 4, c. 34, s. 3, if any servant in *husbandry*, or any *artificer*, *colico-printer*, *handicraftsman*, *miner*, *collier*, *keelman*, *pitman*, *glassman*, *potter*, *labourer*, or other person, shall contract to serve any person for any time, or in any other manner, and shall not enter into his service according to his contract,—such contract being in writing, and signed by the contracting parties;—or, having entered into such service, shall absent himself from his service before the term of his contract (whether in writing, or not,) shall be completed, or neglect to fulfil the same; or be guilty of any other misconduct or misdemeanor in the execution thereof, or otherwise, respecting the same; then, upon complaint made on oath to any justice by the person with whom the servant or workman shall have contracted, or by his servant, manager, or agent, the justice may issue his warrant for apprehending the offender, and examine into the nature of the complaint. And if it shall appear to him, that the servant or workman shall not have fulfilled such contract, or has been guilty of any other misconduct or misdemeanor, the justice may commit him to hard labour, not exceeding three months, and abate a proportionable part of his wages during the period of his confinement; or, in lieu thereof, may abate

the whole or any part of his wages, or may discharge him from his contract, service, or employment.

A commitment under this section must state, that the party charged with neglecting his work, or other misconduct, had *contracted* to serve the complainant, in order to bring the case within the meaning of the act; for the relation of master and servant is essential to give the magistrate jurisdiction. A contract to do certain work at a certain price is not sufficient; there must be, in respect of such work, a contract for *service* to the employer *exclusively* (q).

Payment of Wages, when Master abroad or absent.—By sect. 4 of the above act of 4 Geo. 4, after reciting that it frequently happens that masters or employers reside at considerable distance from the place where their business is carried on, or are occasionally absent for long periods of time, and, during such absence, entrust their business to the management of stewards, agents, bailiffs, foremen, or managers, whereby servants and workmen are often subjected to great difficulties and hardships; it is enacted, that in either of such cases, a justice, upon the complaint of any such servant, workman, or labourer, concerning the nonpayment of his wages, may summon such steward, or other person, to appear before him, and hear and determine the complaint in the same manner as complaints of the like nature are directed to be determined by the 20 Geo. 2, c. 19 (r); and may also make an order for the payment by such steward, or other agent, of so much wages as shall appear to be justly due, provided the sum does not exceed 10*l*. And in case of refusal to pay the same for twenty-one days, the same may be levied by distress on the master or employer.

Wages may be ordered to be paid within a certain time.—By sect. 5, every justice before whom any complaint shall be made, in pursuance of the above-mentioned act of 20 Geo. 2, c. 19, may order the amount of the wages to be paid within such period as the justice shall think proper; and in case of refusal may levy the same by distress.

Extension of the above Act to other Trades.—In order to extend the provisions of this last act to persons engaged in the *silk* manufacture, who were not specifically mentioned in it, it is enacted by the 10 Geo. 4, c. 52, that all the provisions of the 4 Geo. 4, c. 34, are

(q) *Hardy v. Ryle*, 9 B. & C. 603; (r) See *ante*, p. 1079.
Lancaster v. Greaves, ib 628

extended to all the trades and occupations mentioned in the 17 Geo. 3, c. 56 (s).

1. *Information of a Labourer for Wages, under 20 Geo. 2, c. 19, s. 1 (t).*

Middlesex, } The information and complaint of A. B., of, &c., exhibited before me
to wit. } J. P. esquire, one of her Majesty's justices of the peace in and for the
said county, on the — day of — in the year of our Lord 1843; who on his oath
saith, that on the — day of — last he was hired and employed by C. D., of, &c.,
farmer, to be his servant in husbandry for the term of one year then next following, at
the wages of £ — per year; that he the said A. B. hath duly performed his said
service; and that the said C. D. refuses to pay to him the said A. B. the sum of £ —
for one quarter's wages justly due unto him for the said service; And therefore the
said A. B. prays that the said C. D. may be summoned before me, the said justice, to
answer the said complaint.

Taken before me,

A. B.

J. P.

2. *Summons of the Master thereon.*

County of }
— } To the constable of —, in the said county.

Whereas information and complaint hath been made unto me J. P. esquire, one of
her Majesty's justices of the peace in and for the said county, upon the oath of A. B.,
late of — in the said county, husbandman, that on the — day of — last, &c.
[set out the complaint as in the above information]: These are therefore to command
you forthwith to summon the said A. B. to appear before me at —, in the said
county, on — the — day of this present month of —, at the hour of —, in
the — noon of the same day, to show cause why the said wages should not be paid.
And be you then there to certify what you shall have done in the premises. Given
under my hand, the — day of — in the year of our Lord 1843.

3. *Order for Payment of Wages thereon.*

County of } Whereas information and complaint hath been made unto me, J. P.,
— } esquire, one of her Majesty's justices of the peace in and for the said
county, upon the oath of A. B., late of — in the said county, husbandman, that on
the — day of — &c. [state the complaint as in the information]: And whereas
the said C. D., having appeared before me in pursuance of my summons for that pur-
pose, hath not proved to me that the said wages have been duly paid unto the said
A. B., nor hath showed to me any just cause why the said wages should not be paid;
I, the said justice, therefore having duly examined into and considered the truth and
matter of the said complaint, on the oath of the said A. B., do hereby adjudge and
determine that he the said C. D. do forthwith (u) pay or cause to be paid to the said
A. B. the sum of £ — which appears to me to be justly and reasonably due from
the said C. D. to the said A. B. as and for his wages as aforesaid. Given under my
hand and seal the — day of — in the year of our Lord 1843.

J. P. (L. s.)

(s) See post, *Workmen in particu-
lar Trades.*

(t) See ante, p. 1079.

(u) See 4 Geo. 4, c. 34, s. 5, ante, p.
1081.

4. *Warrant of Distress thereon.*

County of }
 —. } To the constable of — in the said county.

Whereas A. B., late of — in the said county, husbandman, hath complained unto me J. P. esquire, one of her Majesty's justices of the peace in and for the said county, that C. D., of — in the said county, farmer, hath refused to pay unto him the said A. B. the sum of £ — for the wages justly due unto him for service in husbandry duly performed by the said A. B. for the said C. D. : And whereas the said C. D., having appeared before me in pursuance of my summons for that purpose, hath not proved to me that the said wages have been paid by him to the said A. B., nor hath shown any just cause why the same should not be paid, and the same are still justly due unto the said A. B. : I, therefore, the said justice, upon due examination had thereof, on the — day of —, by writing under my hand and seal, did thereupon adjudge and determine, that he the said C. D. should forthwith pay or cause to be paid to the said A. B. the sum of £ —, which appeared, to me to be justly and reasonably due from the said C. D. to him the said A. B. as and for his wages as aforesaid. And whereas it appears to me, that the said C. D. on the — day of —, had due notice of my said order, and that the said sum of £ — was then duly demanded of him the said C. D. by the said A. B., but that he the said C. D. did not then pay, nor hath yet paid, the same, or any part thereof : These are therefore to command you to make distress of the goods and chattels of him the said C. D. ; and if, within the space of five days next after such distress by you made, the said sum of £ —, together with the reasonable charges of taking and keeping the said distress, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by the sale thereof, that you do pay the said sum of £ — unto him the said A. B., returning the overplus on demand unto the said C. D., the reasonable charges of taking, keeping and selling the said distress being thereout first deducted. Given under my hand and seal the — day of — in the year of our Lord 1843.

J. P. (L. S.)

5. *Information of a Master against a Workman, for misbehaviour, after entering into his Service, under 4 Geo. 4, c. 34, s. 3 (x).*

County of } Be it remembered, that on this — day of —, in the year —,
 —. } A. B. of —, in the county aforesaid, carpenter, complaineth and maketh oath before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, that C. D. late of — aforesaid, handicraftsman, did, on the — day of —, in the year of our Lord —, at —, in the county aforesaid, contract with the said A. B. to serve him as a handicraftsman for the term of —, and did then and there enter into such service; and that the said C. D. afterwards and whilst he was in the said service, to wit, on the — day of — last, and on other days and times whilst he was in the said service, was guilty of great misconduct and ill-behaviour, in this, to wit, that he the said C. D. [*here set forth the offence*]; and thereupon he the said A. B. prayeth that the said C. D. may be summoned to answer the said complaint.

6. Warrant against a Workman thereon.

County of }
 ——— } To the constable of ———.

Whereas information and complaint hath been made before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, by A. B. of ———, in the said county, carpenter, upon the oath of the said A. B., against C. D. late of ——— aforesaid, in the county aforesaid, handicraftsman, for that the said C. D. did, &c. [*here set forth the complaint, as in the preceding information*]: These are therefore to command you forthwith to bring the said C. D. before me, to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal, the ——— day of ———, in the year of our Lord 1843.

7. Commitment thereon, and Order for the Abatement of Wages during Confinement.

County of } To the constable of ———, in the said county, and to the keeper of the
 ——— } house of correction at ———, in the said county.

Whereas information and complaint hath been made before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, by A. B. of ———, in the said county, carpenter, upon the oath of the said A. B., against C. D., late of ——— aforesaid, in the county aforesaid, handicraftsman, for that the said C. D. did, &c. [*here set forth the complaint, as stated in the information*]. And whereas the said C. D., in pursuance of my warrant issued for that purpose, hath been brought before me this day to answer the said complaint, I have duly examined the proofs and allegations of both the said parties touching the matters of the said complaint, and upon due consideration had thereof, I do hereby adjudge and determine that he the said C. D. did contract with the said A. B. in manner aforesaid, and hath in his said service and employment been guilty of the said offence of which the said A. B. hath above thereof complained against him; and I do therefore convict him the said C. D. of the said offence, in pursuance of the statutes in that case made and provided: These are therefore to command you the said constable forthwith to convey the said C. D. to the said house of correction at ——— aforesaid, and to deliver him to the keeper thereof, together with this warrant; and I do hereby command you, the said keeper, to receive the said C. D. into your custody in the said house of correction, there to remain and be kept to hard labour for the space of three months from the date hereof. And I do further order that there shall be an abatement of the sum of £—— from the wages of the said C. D. for the said period of three months during which he shall be so confined in the said house of correction; and I do hereby discharge the said A. B. from the payment of the said sum of £—— accordingly. And for your so doing this shall be your sufficient warrant. Given under my hand and seal, the ——— day of ———, in the year of our Lord 1843.

J. P. (L. S.)

8. Order thereon, for the Abatement of Wages, instead of committing the Servant.

Middlesex, } Whereas information and complaint on oath hath been made unto
 to wit. } me, J. P. esquire, one of her Majesty's justices of the peace in and
 for the said county, by A. B. of ———, in the county aforesaid, carpenter, that C. D.
 late of, &c. handicraftsman, did, &c. [*state the complaint, as in the information*]. And
 whereas the said C. D. in pursuance of my warrant, &c. [*proceed as in the last pre-*

cedent to these words, inclusive, "and I do therefore convict him the said C. D. of the said offence, in pursuance of the statutes in that case made and provided"; and I do hereby order, as a punishment for the said offence, that there shall be a deduction of the sum of £—— from the wages of the said C. D. now due to him from the said A. B.; and I do hereby discharge the said A. B. from the payment of the said sum of £—— accordingly. Given under my hand and seal, this —— day of ——, in the year of our Lord 1843.

9. Order thereon, discharging the Servant, instead of any other Punishment.

[Proceed as directed in the last precedent, to the end of the words "in pursuance of the statute in that case made and provided,"] And I do hereby order, as a punishment for the said offence, that the said C. D. be discharged from his said contract, service, and employment, and I do hereby discharge him accordingly. Given under my hand and seal, this —— day of ——, in the year of our Lord 1843.

J. P. (L. 8.)

10. Information on 4 Geo. 4, c. 34, s. 3, against a Workman, for absenting himself from Service before the Completion of his Contract (y).

County of } Be it remembered, that on this —— day of ——, in the year ——,
——. } A. B. of ——, in the county aforesaid, calico printer, complaineth and maketh oath before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, that C. D. late of —— aforesaid, in the said county, handicraftsman, did on the —— day of —— last, contract to serve the said A. B. in his said business of a calico printer for the space of ——, and did then and there enter into such service; and that afterwards, and before the term of the said contract was completed, to wit, on, &c. and on divers other days and times afterwards, for the space of —— days, he the said C. D. did absent himself from his said service, contrary to his said contract; and thereupon the said A. B. prays that the said C. D. may be brought before me to answer the said complaint.

Taken before me,

A. B.

J. P.

11. Information of a Workman against his Master for Ill-usage, under the 20 Geo. 2, c. 19, s. 2 (y).

County of } Be it remembered, that on this —— day of ——, in the year ——,
——. } A. B. of ——, in the county aforesaid, artificer, complaineth and maketh oath before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, that on the —— day of —— last he the said A. B. was hired and employed by C. D. of —— aforesaid, in the county aforesaid, wheelwright, to serve him in his said business of a wheelwright, for the space of ——; and that the said A. B. did accordingly on the said —— day of —— enter upon such service, and hath ever since, until this present time, continued and doth still continue in the said service and employment: And the said A. B. upon his oath saith, that the said C. D. during the said service and employment hath greatly misused and ill-treated him the said

A. B., in this, to wit, that [*here set forth the particulars of the ill-treatment*]: and thereupon the said A. B. prays that the said C. D. may be summoned before me to answer the said complaint.

Taken before me,

A. B.

J. P.

12. *Summons of the Master thereon.*

County of }
_____ } To the constable of _____.

Whereas complaint has been this day made unto me J. P., esquire, one of her Majesty's justices of the peace in and for the said county, upon the oath of A. B. of _____, in the said county, artificer, that on the _____ day of _____ last, he the said A. B. was hired and employed, &c. [*as in the above information.*] These are therefore to require you, in her Majesty's name, to summon the said C. D. to appear before me on _____ next, the _____ day of _____, at the house of _____, in _____, in the said county, at the hour of _____ in the afternoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the execution thereof. Given under my hand and seal, the _____ day of _____, in the year of our Lord 1843.

13. *Order thereon for the Discharge of the Workman from his Service.*

Middlesex, } Whereas information and complaint on oath hath been made unto me,
to wit. } J. P. esquire, one of her Majesty's justices of the peace in and for the
said county, by A. B. of, &c. artificer, that on the _____ day of _____ last he the said
A. B. was hired, &c. [*as in the information.*] And whereas the said C. D. in pursuance of my summons for that purpose, hath this day appeared before me, the said justice, to answer the said complaint; and, after duly examining the proofs and allegations of both parties touching the matter of the said complaint, it hath been fully proved before me to my satisfaction, upon the oath of the said A. B., and also on the oath of E. F. in the presence of the said C. D., that he the said C. D. hath misused and ill-treated the said A. B. in his service and employment, in manner and form as the said A. B. hath above thereof complained against him; I do therefore hereby order, in pursuance of the statute in that case made and provided, that the said A. B. be discharged of and from his said service and employment; and I do hereby discharge him from the same accordingly. Given under my hand and seal, the _____ day of _____, in the year of our Lord 1843.

14. *Information on 4 Geo. 4, c. 34, s. 3, against a Workman, for not entering into his Service according to a written Contract (a).*

Middlesex, } Be it remembered, that on, &c. at, &c., A. B. of, &c. personally came
to wit. } before me, J. P. esquire, one of her Majesty's justices of the peace in
and for the said county, and upon his oath complaineth and informeth me, that C. D. of _____, miner, did on the _____ day of _____, by a certain contract in writing under the hands of the said A. B. and C. D., then and there contract to serve him the said A. B. [*here state shortly the terms of the contract*]: and that the said C. D. did not

(a) See ante, p. 1080.

afterwards enter into or commence his said service according to his said contract, but wholly neglected so to do, contrary to the form of the statute in such case made and provided: And thereupon the said A. B. prays that the said C. D. may be brought before me, the said justice, to answer the said complaint.

Taken and sworn before me, the — }
day of —, 1843. }

A. B.

2. *Payment of Wages otherwise than in Money.*

By 1 & 2 Will. 4, c. 37, s. 9, any employer of any artificer in any of the trades thereafter enumerated, who shall by himself, or by the agency of any other person, directly or indirectly *enter into any contract, or make any payment*, thereby declared illegal, (that is, in respect of the *payment of wages other than in the current coin of the realm*,) shall, for the first offence forfeit not exceeding 10*l.*, nor less than 5*l.*; for the second offence not exceeding 20*l.*, nor less than 10*l.*; and for the third offence he is to be deemed guilty of a misdemeanor.

Recovery of Penalties.—By *sect. 10*, the *penalties are recoverable* by any informer before *two justices*. In case of a second offence, a certificate signed by the clerk of the peace of the previous conviction is declared sufficient evidence of such conviction. No person is to be punished for a second offence, unless ten days shall have intervened since the first conviction; and no person is to be punished, as for a second offence, after more than two years from the commission of the first.

Attendance of Witnesses.—By *sect. 11*, *one justice* may issue a summons for the attendance of *witnesses*; and in case of neglect of summons, *two justices* may then issue a warrant for the commitment of the party summoned for not more than fourteen days, or until such person shall submit to be examined to give evidence.

Non-payment of Penalty.—By *sect. 12*, in default of payment of any penalty, it may be levied by *distress*; or if there are not sufficient goods to satisfy the amount of the penalty, the offender may, in the first instance, be *committed* to the common gaol for *three calendar months*.

Provision as to Partners.—By *sect. 13*, a *partner* is not to be liable in person for the offence of his co-partner; but the partnership property is to be liable; and in all cases of *partnership*, the justices may make an order upon any one or more of the partners; and the service of any process upon one partner is sufficient.

Process and forms of proceeding.—By *sect. 14*, a *summons* may

be *served*, by leaving a copy at the place used or occupied by the offender for carrying on his trade, or at his place of residence, being at or upon any such place.

By *sect. 15*, the same forms for convictions, summonses, and warrants for distress or commitment are directed to be used, as are given in the schedule.

By *sect. 16*, the justices are to *return convictions* to the next sessions, and the clerk of the peace is to deliver copies to persons applying, on payment of one shilling; and by *sect. 17*, convictions are *not to be quashed for want of form*

Application of Penalties.—By *sect. 18*, the justices may *award any portion of the penalty* to the informer, not exceeding 20*l.*, and the rest to the treasurer of the county, in aid of the county rate.

Trades to which the Act applies.—*Sect. 19*, specifies the trades to which the act applies, viz. manufacturing of *iron or steel*, working of *mines of coal, iron-stone, lime-stone, salt-rock*; working or getting of *stone, slate, or clay*; or in making or preparing of *salt, bricks, tiles, or quarries*; manufacturing any articles or hardwares made of *iron or steel*, or of *iron and steel combined*, or of *plated articles of cutlery*, or any goods or wares made of *brass, tin, lead, pewter*, or other *metal*, or any *japanned goods or wares* whatsoever; manufacturing or preparing *woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk*, whether the same be or be not mixed with one another; making or preparing *glass, porcelain, china, or earthenware*, or any materials used therein; making or preparing of *bone, thread, silk, or cotton lace*, or of *lace made of any mixed materials*.

What Justices disqualified.—By *sect. 21*, a *justice is prohibited from acting*, who is engaged in any of the above trades or occupations, or who is the father, son, or brother of any such person. And by *sect. 22*, county justices may act, in cases where those of towns are thus disqualified.

Exemptions from Act.—By *sect. 23*, the act is not to extend to prevent the employer of any artificer, or agent of such employer, from supplying or contracting to supply to him any medicine or medical attendance, or any fuel, or any materials, tools, or implements to be by him employed in his trade or occupation, if he is employed in mining; or any hay, corn, or other provender to be consumed by any horse, or other beast of burden employed by him in

his trade or occupation; nor from demising to any artificer, workman, or labourer the whole or any part of any tenement at any rent to be thereon reserved; nor from supplying to him any victuals dressed or prepared under the roof of such employer, and there consumed by such artificer; nor from making any stoppage or deduction from his wages, for or in respect of any such rent, medicine, or other things before enumerated, or for or in respect of any money advanced to him for any of the above mentioned purposes; provided that such stoppage shall not exceed the real and true value of the article, and that the contract for such stoppage shall be in writing and signed by such artificer.

By *sect. 24*, the employer may also advance to the artificer any money to be by him contributed to any *friendly society* or *savings' bank*, or for his relief in sickness, or for the education of his children.

The following forms are given in the schedule to the last act.

1. *Conviction under the 1 & 2 Will. 4, c. 37, for paying Wages in Goods.*

—, } Be it remembered, that on this — day of —, in the year of our
to wit. } Lord 1843, at — in the county of —, A. B. is duly convicted before
us, C. D. and J. G., esquires, two of her Majesty's justices of the peace in and for the
county of —, for that the said A. B. [*specify the offence and the time and place when
and where committed*]; whereby the said A. B. has forfeited the sum of £—, this
being adjudged to be the first [*or "second"*] offence [*as the case may be*] against the
provisions of an act to prohibit the payment of wages in goods, besides the costs of this
conviction, which we assess at the sum of — [*here state to whom and in what pro-
portions the penalty and costs are to be paid*], pursuant to the statute in that case pro-
vided. Given under our hands and seals, the day and year first above mentioned.

2. *Summons for the attendance of a Witness.*

—, } Whereas information upon oath hath been made before me, A. B.,
to wit. } esquire, one of her Majesty's justices of the peace in and for the county
aforesaid, that C. D. of — has been guilty of an offence against the laws prohibiting
the payment of wages in goods, and that you are a material witness to be examined on
the hearing and determination of such information: These are therefore to require you
to appear personally before me, and such other justice or justices as shall hear and de-
termine such information at — in the county aforesaid, on the — day of —, at
the hour of — of the same day, there to be examined touching the matters alleged
in such information. As witness my hand.

3. *Warrant of Commitment of a Witness.*

—, } To the constable, or other proper officer, and to the keeper or gaoler
to wit. } of —.
Whereas C. D. hath been duly summoned to appear and give evidence before us,

A. O. and G. F., two of her Majesty's justices of the peace in and for the county of —, on this — day of —, being the time and place appointed for hearing and determining the complaint made on the oath of —, before us, against A. B. of having [stating the offence as laid in the information], contrary to the laws now in force for prohibiting the payment of wages in goods; and whereas the said C. D. hath not appeared before us at the time and place aforesaid specified for that purpose, or offered any reasonable excuse for his default; [or "and whereas the said C. D., having appeared before us at the time and place aforesaid specified for that purpose, hath not submitted to be examined as a witness and give his evidence before us touching the matter of the said complaint, but hath refused so to do:"] Therefore we, the said justices, do hereby, in pursuance of the statute made, &c. [setting forth the title of the act], commit the said C. D. to the [describing the prison], there to remain without bail or mainprize, for his contempt aforesaid, for the space of three calendar months, or until he shall submit himself to be examined and give his evidence touching the matter of the said complaint, or shall otherwise be discharged by due course of law: And you [the constable or peace officer to whom the warrant is directed] are hereby authorized and required to take into your custody the body of the said C. D., and him safely to convey to the said prison, and him there to deliver to the gaoler or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C. D., and him safely to retain and keep, pursuant to this commitment. Given under our hands and seals, this — day of —, in the year of our Lord 1843.

4. Warrant to distrain for a Forfeiture.

—, } To the constable ["headborough," or "tithingman"] of —.
to wit.

Whereas A. B. of —, is this day convicted before us, C. D. and J. G., two of her Majesty's justices of the peace in and for the said county, upon oath of H. K., a credible witness, for that the said A. B. did [here set forth the offence], contrary to the statute in that case made and provided, by reason whereof the said A. B. hath forfeited the sum of £—, to be distributed as herein is mentioned, besides the sum of — for costs, both of which he hath refused to pay: These are therefore, in her Majesty's name, to command you to levy the said sum of £—, and also the sum of — for costs, by distress of the goods and chattels of him the said A. B.; and if within the space of — days next after such distress by you taken, the said sums, together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do retain the said costs, and also the said forfeiture or sum of £—, and thereout pay to L. M., who hath informed and prosecuted in this case, the sum of £—, being his adjudged portion of such forfeiture, and the residue thereof is to go to the treasurer of the said county of —, in aid of the rates thereof; and that you do return the overplus, on demand, to him the said A. B. (the reasonable charges of taking, keeping, and selling the said distress being first deducted); and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of £—, that then you certify the same to us, together with this warrant. Given under our hands and seals, this — day of —, in the year of our Lord 1843.

5. *Commitment for want of Distress.*

—, } To the [constable] of — in the said county, and to the keeper of the
to wit. } common gaol [or “the house of correction”] at — in the said county.

Whereas A. B. of — in the said county was, on the — day of —, convicted before us, C. D. and J. G., esquires, two of her Majesty's justices of the peace in and for the said county, upon the oath of H. K. a credible witness, for that he the said A. B. [*here set forth the offence*], contrary to the statute made in the — year of the reign of his Majesty King William the Fourth, by reason whereof the said A. B. hath forfeited the sum of £—, besides the sum of — for costs: And whereas on the — day of —, in the year aforesaid, we did issue our warrant to the [constable] of —, to levy the said sum of £— and costs by distress and sale of the goods and chattels of him the said A. B., and to distribute the same according to the directions of the said statute: And whereas it duly appears to us, upon the oath of the said [constable], that the said [constable] hath used his best endeavours to levy the said sum on the goods and chattels of the said A. B. as aforesaid, but that no sufficient distress can be had whereon to levy the same [*or “by confession of the said A. B.,” or “by the oath of a credible witness, that the said A. B. hath not goods and chattels within our jurisdiction whereon to levy the said forfeiture and costs”*]: These are therefore to command you the said [constable] of — aforesaid, to apprehend the said A. B., and him safely to convey to the common gaol [*or “house of correction”*] at — in the said county, and there to deliver him to the keeper thereof, together with this precept: And we do also command you, the said keeper, to receive and keep in your custody the said A. B. for the space of three months, unless the said sum and costs shall be sooner paid; and for so doing this shall be your sufficient warrant. Given under our hands and seals, this — day of —, A. D. 1843.

3. *Arbitration of disputes between Masters and Workmen.*

What subjects of Dispute may be settled by Arbitration.—By 5 Geo. 4, c. 96, s. 2, for the consolidation of the laws relating to arbitration of disputes between masters and workmen, the following subjects of dispute between masters and workmen, or between workmen and those employed by them, in any trade or manufacture in any part of the United Kingdom, may be settled and adjusted in manner following, that is to say;—

Disagreements respecting the price to be paid for work done or in the course of being done, whether such disputes shall happen or arise between them respecting the payment of wages as agreed upon, or the hours of work as agreed upon, or any injury or damage done, or alleged to have been done, to the work, or respecting any delay or supposed delay in finishing the work, or not finishing the work in a good and workman-like manner, or according to any contract, or to bad materials.

Cases where the workmen are to be employed to work any new pattern, which shall require them to purchase any new implements

of manufacture, or to make any alteration upon the old implements for the working thereof, and the masters and workmen cannot agree upon the compensation to be made to such workmen for or in respect thereof.

Disputes respecting the length, breadth, or quality of pieces of goods, or in the case of cotton manufacture, the yarn thereof, or the quantity and quality of the wool thereof.

Disputes respecting the wages or compensation to be paid for pieces of goods that are made of any great or extraordinary length.

Disputes in the cotton manufacture respecting the manufacture of cravats, shawls, policat, romal and other handkerchiefs, and the number to be contained in one piece of such handkerchiefs.

Disputes arising out of, for, or touching the particular trade or manufacture, or contracts relative thereto, which cannot be otherwise mutually adjusted and settled.

Disputes between masters and persons engaged in sizing or ornamenting goods.

But nothing is to authorize any justice to establish a rate of wages or price of labour or workmanship, unless with the mutual consent of both master and workman. All complaints by any workman as to *bad materials* must be made within three weeks of his receiving the same; and all complaints from any other cause must be made within six days—by 7 Will. 4 & 1 Vict. c. 67, s. 1, extended to fourteen days—after such cause of complaint shall arise.

By what Arbitrators.—By *sect. 3*, whenever such subjects of dispute shall arise as above mentioned, the master or workman may demand an arbitration or reference thereof in manner following; that is to say, where the party complaining and the party complained of shall come before, or agree by any writing under their hands to abide by the determination of, any justice of the peace of any county, town or place within which the parties reside,—or, by the 7 Will. 4 & 1 Vict. c. 67, s. 2, within which the party complained against shall reside,—the justice may hear and finally determine in a summary manner the matter in dispute between such parties. But if the parties shall not come before or so agree to abide by the determination of a justice, then any such justice is required, on complaint made before him, and proof by the examination of the complainant that application has been made to the person complained against, or his agent (if such dispute has arisen with such agent), to settle such dispute, and that the same has not been settled,—or where the dispute

relates to a bad warp, that such cause of complaint has not been done away with within forty-eight hours after such application,—to summon before him such person or agent on some day not exceeding three days, exclusive of Sunday, after the making such complaint, giving notice to the complainant of the time and place appointed; and if the party summoned shall not appear, or send some person on his behalf, to settle such dispute, or, appearing, shall not do away such cause of complaint, then the justice is required, at the request of either party, to nominate arbitrators or referees for settling the matters in dispute; not less than four, nor more than six persons to be proposed, one-half of whom shall be master manufacturers or agents as foremen of some master manufacturer, and the other half workmen in such manufacture, residing in or near to the place where such disputes shall have arisen; out of which master manufacturers, agents, or foremen, the master engaged in such dispute, or his agent, shall choose one, and out of the workmen so proposed, the workman or his agent shall choose another, who shall have full power to hear and finally determine such dispute.

When other Arbitrators may be appointed.].—By sect. 4, in case any person so proposed by the justice shall refuse or delay to accept such arbitration, or, accepting, shall not act therein within two days after such nomination, the justice must proceed to name another or other persons of the descriptions aforesaid to be arbitrator or arbitrators in the place of the party first nominated. In every case of a second nomination, the arbitrators must meet within twenty-four hours after the application for the same, and at the same place at which the meeting of the referees first named was appointed, or at some other convenient place, as the justice may appoint; and the expense of every such application for the appointment of a second referee is to be borne and defrayed by the party, through whose default, or the default of whose referee, such application is rendered necessary. The justice making such second appointment must certify the same in the form set forth in the act, or in some other to the like effect. And if the second arbitrator shall not attend at the time and place appointed for settling the matters in dispute, the other arbitrator may proceed by himself to the hearing and determining of the matters in dispute; and in such case the award of such sole arbitrator shall be final and conclusive.

Meeting of Arbitrators.].—By sect. 5, after the nomination of the arbitrators, the justice must appoint a day and place of meeting

according to the directions of the act; notice of which nomination and of the meeting must thereupon be given by the justice to the arbitrators, and to any party to such dispute who may not have attended before the justice; which appointment is to be certified by the justice in the form given by the act. The arbitrators are to hear and examine the parties and their witnesses, and determine the dispute within two days after such nomination, exclusive of Sundays; and the determination of the arbitrators is to be final.

By *sect. 6*, where complaints are made respecting bad warps or utensils by workmen, the place of meeting must be at or as near as may be to the place where the work shall be carrying on, and in all other cases at or as near as may be to the place where the work has been given out.

Non-attendance of parties.—By *sect. 7*, if the complainant shall not attend, or send some person on his behalf, at the time and place appointed by the justice for the purpose of naming such persons as aforesaid, he shall not in such case be entitled to the benefit of the act; and if the party complained against shall not attend, or send some person on his behalf, the justice shall thereupon nominate a person for him out of such persons so proposed as aforesaid.

Mode of Proceeding by the Arbitrators.—By *sect. 8*, the arbitrators at the meeting so appointed shall, by inspection of the work in regard to which the dispute may have arisen, by hearing and examining the parties or any other persons on their behalf, or that attend to give evidence respecting the matters in dispute, upon oath or otherwise, or by otherwise ascertaining the true state of the case, in such manner as to the arbitrators shall appear necessary, proceed to determine the matter in dispute; and their award is to be final.

Punishment of refractory Witness.—By *sect. 9*, any arbitrator may, at the request in writing of any of the parties, issue his summons to any witness to appear and give evidence before such arbitrator at the time and place appointed for hearing and determining the dispute; and if any person so summoned shall not appear or offer some reasonable excuse for the default, or, appearing, shall not submit to be examined as a witness and give his evidence touching the matter of such dispute, then any justice of the peace acting in and for the county, town, or place where the dispute shall have arisen—(proof on oath, in the case of any person not appearing, having been first made of the due service of the summons, by delivering the same to the party or by leaving it, twenty-four hours

before the time appointed for such person to appear before the arbitrator, at the usual place of abode of such person)—may, by warrant under his hand, commit such person so making default to some prison within his jurisdiction, not exceeding two calendar months, nor less than seven days, or until such person shall submit himself to be examined and give his evidence before the arbitrator; and in case the dispute shall be heard and determined before the offender shall submit to be examined and give evidence, then he is to be imprisoned the full term of such commitment.

When the Arbitrators may refer the Complaint to a Justice.—By sect. 10, in case the arbitrators cannot agree upon and decide the matter in dispute, or shall not make and sign their award within three days after the date of the order of the justice certifying their appointment, then they are, without delay, to go before the justice, and in case of his absence or indisposition, before any other justice acting in and for the county, town, or place, and residing nearest to the place, where the meeting to settle such dispute shall have taken place, and state to such justice the points in difference between the arbitrators; which points in difference such justice is required to hear and determine, upon the statement of the arbitrators, with all possible despatch, and in all cases within the space of two days after the expiration of the time allowed to the arbitrators to make their award; and the determination of such justice shall be final.

Where one Arbitrator refuses to go before a Justice.—By sect. 11, if either of the arbitrators shall neglect or refuse to go before a justice, then the justice, after summoning the arbitrators to attend him, may determine the matter in dispute, upon the statement and representation of either of the arbitrators who shall come before him.

What Justice disqualified.—By sect. 12, no justice being a master manufacturer, or agent, shall act as a justice under the act.

How disputes may be otherwise adjusted.—By sect. 13, in all such cases of dispute as aforesaid, as well as in all other cases, if the parties mutually agree that the matter in dispute shall be determined in a different mode to the one prescribed by the act, such agreement shall be valid, and the award and determination thereon final and conclusive between the parties, and the same proceedings of distress, sale, and imprisonment, may be had towards enforcing such award (by application to any justice of the county, town, or place within

which the parties shall reside) as are prescribed for enforcing awards made under the provisions of the act.

Proceedings against Partners, Agents, or Servants.—By sect. 14, where any work shall have been delivered to a workman by the agent or servant of any master, to be, when finished, delivered to such agent or servant; and also where two or more persons shall carry on the business of such manufacture as partners, the like proceedings may be had against such agent, servant, or partner, and shall be as effectual, as if the same had been had against the principal, or all the partners; and all the said persons respectively shall be subject to the same proceedings and consequences for refusing or delaying to abide by or perform any award or order, as if the proceedings had been had against the principal, or against all the partners.

Parties may depute another to act for them.—By sect. 15, any master or workman, by writing under his hand, may authorize any person to act for him in submitting to arbitration, and attending arbitrators or justices touching the matter of any arbitration.

Where the Master becomes Bankrupt.—By sect. 16, where any proceedings shall have been commenced against a master, and he shall become or be bankrupt, or any assignment of his estate or effects shall have been made under the bankruptcy, or otherwise by deed or in law, the trustee or assignees of his estate shall be liable to the proceedings authorized by the act against the master; but all sums of money to be paid in pursuance of any award or orders, are recoverable only out of the estate or effects of such master, and not out of the proper money of his assignees.

When the Complainant is a married Woman, or Infant.—By sect. 17, where any married woman, or infant under the age of twenty-one years, shall have cause of complaint in any of the cases provided for by the act, such complaint may be lodged, and all further proceedings thereupon had, by and in the name of the husband of such married woman, and of the father,—or, if dead, of the mother,—or, if on the death of both parents, of any of the kindred of such infant, or of the sureties in any indenture of his apprenticeship, where he is an apprentice, or of any person nominated by him, if he shall not have parent, kindred, or surety. And all such proceedings shall be as effectual, valid, and binding, as if such married woman was sole, and such infant of full age.

Tickets to be given out with Work.—By *sect. 18*, with every piece of work given out by the manufacturer to a workman to be done, there shall (if both parties are agreed) be delivered a note or ticket, in such form as the parties shall mutually agree upon; which, in the event of dispute between the manufacturer and workman, shall be evidence of all matters and things mentioned therein; and (by *sect. 19*) a duplicate of such ticket shall be made and kept by the master or agent delivering the same; which duplicate shall be evidence of all the matters and things therein contained, in case the workman shall not produce to the arbitrators, or the justice, the ticket so delivered with the said work.

When Masters cannot complain.—By *sect. 20*, it shall not be allowable to any manufacturer, who shall have received into his possession any article, without objection made within twenty-four hours by himself, or his clerk, or foreman, afterwards to make any complaint on account of work so received.

Extension of time for making Award.—By *sect. 21*, if the parties between whom the reference shall take place shall be desirous to extend the time limited for making the award, they may extend the same by indorsement, according to the form in the schedule, on the back of the order of the justice, certifying the appointment of the referees, to be signed by both of them in the presence of one or more credible witness or witnesses.

Form of Award, &c.—By *sect. 22*, the award may be written at the foot, or upon the back of the justice's order, according to the form in the schedule; and (by *sect. 23*) on the award being fulfilled, the fulfilment must be acknowledged by the party in whose behalf it was made, by an acknowledgment at the foot of the award, in the form given in the schedule, which, with the award, is to be thereupon delivered to the party fulfilling the same.

Power of Distress and Imprisonment.—By *sect. 24*, if any party shall refuse or delay to fulfil the award for the space of two days after the same shall have been reduced into writing, any such justice, on the application of the party aggrieved, may, by warrant under his hand, according to the form in the schedule, or some other to the like effect, cause the sum directed to be paid by any such award to be levied by distress and sale of any goods and chattels of the person liable to pay the same, together with all costs and charges attending such distress and sale, such sale to take place within such time, not exceeding five days, as the justice shall think proper; and in case it

shall appear by any return to such warrant, that no sufficient distress can be readily had, which return may be in the form contained in the schedule, the justice may, by warrant under his hand, according to the form in the schedule, or in some other form to the like effect, commit the person so liable as aforesaid to the common gaol, or some house of correction within his jurisdiction, not exceeding three months.

Power to commit without previous Distress.—By sect. 25, the justice may withhold a warrant of distress, and commit the defaulter for any time not exceeding three months; such commitment to be in the form contained in the schedule.

Commitment of a Witness.—By sect. 27, the warrant of commitment for not appearing as a witness, or not submitting to be examined, is to be also in the form set forth in the schedule.

Appeal, &c.—By sect. 28, no *appeal* or *certiorari* is allowed; and, by sect. 29, no proceedings are to be invalid for want of form.

Fees.—By sect. 30, no higher fees are to be taken for any proceedings under the act than as follows:

To the Clerk of the Justice.

For each summons	2d.
For every oath or affirmation	3d.
For drawing and entering the order	4d.
For every warrant	6d.

To the Constable or other Peace Officer.

For service of summons or order	4d.
For executing warrant of distress, and sale of goods	1s.
For custody of goods distrained, <i>per diem</i>	3d.
For every mile he shall travel	3d.
For every caption	6d.

And a table of fees, signed by the justice's clerk, must be hung up in every place where any general or quarter sessions, or petty, or other sessions of the peace shall be held.

Costs and Expenses.—By sect. 31, all costs, fines, and expenses, attending the application to justices under the act, and of the arbitration pursuant thereon, shall be settled by the arbitrators or arbitrator by whom such dispute shall be settled; and where the same shall be determined by any justice, then by such justice. And where the arbitrators cannot agree as to such costs, the same shall be settled

by the justice by whom the arbitrators were named; and in case of his absence or indisposition, by any justice for the same county, town, or place, nearest to the place at which the arbitrators met to settle the dispute. But no master manufacturer, or his foreman, or agent, shall in any case be allowed for costs, time, or expenses, unless it shall appear that the proceedings of the workmen were vexatious and oppressive.

1. *Order of a Justice certifying the nomination of Arbitrators, under Sects. 3 and 5 of the above Act (z).*

Lancashire, } I, A. B., one of the justices of the peace acting in and for the said
to wit. } county, do hereby certify, that C. D. and E. F. are duly nominated referees to settle the matters in difference between G. H. of —, master manufacturer [or “agent,” or “foreman,” as the case may be], and L. H. of —, weaver, pursuant to an act passed in the fifth year of the reign of King George the Fourth; and that the said referees are hereby directed to meet at —, on the — day of —, at — of the clock in the —noon. Dated this — day of —, in the year of our Lord 1843. A. B.

2. *Order certifying the nomination of other Referees in the place of those first appointed, under Sects. 4 and 5 (a).*

Lancashire, } I, A. B., one of the justices of the peace acting in and for the said
to wit. } county, do hereby certify, that the above named C. D. and E. F. [or one of them, as the case may be] having refused [or “delayed”] to act in the above mentioned reference, L. M. and N. O. [or “L. M.” only, as the case may be] are [or “is”] by me duly nominated referees [or “referee”] in the place of the said C. D. and E. F. [or in the place of one of them, as the case may be] to settle the matters in difference between the above named G. H. and L. K.: And the said L. M. and N. O. [or one of them, together with one of the former referees, as the case may be] are directed to meet at the place above mentioned on —, the — day of — instant, at — of the clock in the —noon. Dated this — day of —, in the year of our Lord 1843. A. B.

3. *Form of Award to be written at the foot, or upon the back, of the Justice's Order certifying the Reference (b).*

We, J. K. of &c., and L. M. of &c., the referees appointed to settle the matters in dispute between the parties within named [or “J. K., one of the referees appointed &c., L. M., the other referee appointed, having failed to attend,” or “I, N. O., one of her Majesty's justices of the peace acting in and for the said county of — and residing nearest to the place where the parties within named reside,” as the case may be] do hereby adjudge and determine that [here set forth the determination]. Dated this — day of —, A. D. 1843.

J. K.

L. M.

(z) See *ante*, p. 1092, 3.

(a) See *ante*, p. 1093.

(b) See *ante*, p. 1097.

4. *Form of Acknowledgment of fulfilment of the Award, to be written at the foot or on the back thereof.*

I, A. B., do hereby acknowledge that the above award hath been fulfilled by C. D., who is hereby discharged of the same. Witness my hand, this — day of —.

Witness,

A. B.

G. H.

5. *Form of the Oath to be administered by the Arbitrators, or Justice, to the Parties and Witnesses.*

The evidence that you shall give before us, the arbitrators appointed by A. B. and C. D. to determine the matters in difference between them, under and by virtue of an act passed in the fifth year of the reign of King George the Fourth, intituled "An Act," &c. [state the title of the act], shall be the truth, the whole truth, and nothing but the truth. So help you God.

6. *Commitment of a Witness, under Sects. 9 and 27 (c).*

Middlesex, } To the constable of — in the county of Middlesex, and to the
to wit. } keeper of the house of correction at — in the said county.

Whereas proof on oath hath been made before me, J. P., esquire, one of her Majesty's justices of the peace in and for the county of —, on this — day of —, that N. O. hath been duly summoned and hath neglected to appear and give evidence before C. D. and E. F., the arbitrators appointed by and between G. H. and I. K. to determine the matters in dispute between them, at — in the said county, on the — day of — instant, under and by virtue of an act made in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act" [here set forth the title of the act]; and the said N. O. being required by me the said justice to give evidence before the said arbitrators, and still refusing so to do: Therefore I, the said justice, do hereby, in pursuance of the said act, commit the said N. O. to the [describing the prison or house of correction], there to remain without bail or mainprize, for his offence aforesaid, until he shall submit himself to be examined and give his evidence before the said arbitrators touching the matters referred to them as aforesaid, or shall otherwise be discharged by due course of law: And you, the said constable, are hereby authorized and required to take into your custody the body of the said N. O., and him safely to convey to the said house of correction, and him there to deliver to the keeper thereof: And you, the said keeper, are hereby authorized and required to receive into your custody the body of the said N. O., and him safely to detain and keep, pursuant to this commitment. Given under my hand, this — day of —, in the year of our Lord 1843.

7. *Warrant of Distress, under Sect. 24 (d).*

Middlesex, } To the constable of — in the said county.
to wit. }

Whereas A. B. of —, under an award made by C. D. and E. F., on the — day of —, in the year of our Lord —, pursuant to an act passed in the fifth year

of the reign of his late Majesty King George the Fourth, intituled "An Act," &c. [*state the title of the act*], is liable to pay to G. H. of —, the sum of £—; and the said A. B. hath refused and neglected to pay the same for the space of two days and upwards, subsequent to the making such award: These are therefore to command you to levy the said sum of £— by distress and sale of the goods and chattels of the said A. B.; and I do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within five days, unless the said sum of £— for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are also hereby commanded to certify to me what you shall do by virtue of this my warrant. Given under my hand and seal, at —, the — day of —, A. D. 1843.

8. *Constable's return to the Warrant of Distress.*

I, W. F., constable of —, do hereby certify to J. P., esquire, one of the justices of the peace for —, that I have made diligent search for, but do not know of nor can find any goods and chattels of the within named A. B., by distress and sale, whereof I may levy the sum of £—, pursuant to the directions of the within warrant. Dated the — day of —, in the year of our Lord 1843.

9. *Commitment thereupon to the House of Correction (e).*

County of } To the constable of —, and also to the keeper of the house of cor-
— } rection at —.

Whereas A. B. of —, under an award made by C. D. and E. F., on the — day of —, in the year of our Lord —, pursuant to an act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act," &c. [*state the title of the act*], became liable to pay to G. H. the sum of £—, and also the sum of £— for costs, time, and expenses, making together the sum of £—: And whereas the said A. B. having refused or neglected to pay the same for the space of two days and upwards, subsequent to the making of such award, my warrant was, according to the provisions of the said act, duly made and issued for the levying the said sum of £— by distress and sale of the goods and chattels of the said A. B.: And whereas it appears by the return of —, constable of —, dated the — day of —, that he hath made diligent search for, but doth not know of nor can find, any goods and chattels of the said A. B., by distress and sale whereof the said sum of £— may be levied, pursuant to my said warrant: These are therefore to command you, the said constable of —, to apprehend the said A. B., and convey him to the said house of correction at — aforesaid, and deliver him there to the keeper of the said house of correction: And you, the said keeper of the said house of correction, are hereby commanded to receive the said A. B. into the said house of correction, and there keep him, without bail or mainprize, for the space of — months, unless the said sum of £—, so ordered to be paid as aforesaid, shall be sooner satisfied, with all reasonable expenses. Given under my hand and seal, at —, the — day of —, in the year of our Lord 1843.

(e) See *ante*, p. 1098.

10. Commitment where the Warrant of Distress is withheld, under Sect. 25 (f).

County of } To the constable of —, and also to the keeper of the house of cor-
 —. } rection at —.

Whereas A. B. of —, under an award made by C. D. and E. F., on the — day of —, in the year of our Lord 1843, pursuant to an act passed in the fifth year of the reign of his late Majesty King George the Fourth, intituled "An Act," &c. [state the title of the act], became liable to pay to G. H. the sum of £—, and also the sum of £— for costs, time, and expenses, making together the sum of £—, which he has refused or neglected to pay for the space of two days and upwards, subsequent to the making of such award: And whereas it appears to me, that the recovery of such sum by distress and sale of the goods and chattels of the said A. B. will be attended with consequences ruinous to the said A. B., and I have therefore determined to withhold any warrant of distress, and to commit the said A. B. to prison, pursuant to the said act: These are therefore to command you, the said constable, to apprehend the said A. B., and convey him to the said house of correction at — aforesaid, and deliver him there to the keeper thereof: And you, the said keeper, are hereby commanded to receive the said A. B. into the said house of correction, and there keep him, without bail or mainprize, for the space of — months, unless the said sum of £—, so ordered to be paid as aforesaid, shall be sooner satisfied, with all reasonable expenses. Given under my hand and seal, at —, the — day of —, A. D. 1843.

4. Combinations of Workmen.

For assaults committed in pursuance of a conspiracy to raise the rate of wages, see *Assault, ante*, p. 74.

By the 6 Geo. 4, c. 129, s. 2, all former acts on this subject are repealed.

Using Violence or Threats to Workmen, &c.—By sect. 3, if any person shall, by violence to the person or property, or by threat or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any journeyman, manufacturer, workman, or other person hired or employed in any manufacture trade or business, to depart from his hiring, employment, or work, or to return his work before the same shall be finished, or prevent, or endeavour to prevent, any journeyman or other person, not being hired or employed, from hiring himself to or from accepting work or employment from any person; or if any person shall use or employ violence to the person or property of another, or threats or intimidation, or shall molest or in any way obstruct another, for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular

club or association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied, or of his refusing to comply, with any rules, orders, resolutions or regulations made to obtain an advance or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quality of work, or to regulate the mode of carrying on any manufacture, trade or business, or the management thereof; or if any person shall, by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another, force, or endeavour to force, any manufacturer or person carrying on any trade or business to make any alteration in his mode of regulating, managing, conducting or carrying on such manufacture, trade or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen or servants; every person so offending, or aiding, abetting, or assisting therein, may be imprisoned not exceeding three calendar months, with or without hard labour.

Certain Meetings and Agreements not unlawful.—By *sect. 4*, the act is not to extend to persons who meet together for the sole purpose of consulting upon and determining the rate of wages or prices, which they shall require or demand for their work, or the hours or time for which they shall work, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which they shall require or demand for their work, or the hours or time of working in any manufacture, trade or business.

Offenders compellable to give Evidence.—By *sect. 6*, every person who may offend against the act may, equally with other persons, be compelled to give evidence, as a witness for the prosecution, against any other person; in which case he is himself to be indemnified from any prosecution.

Proceedings on summary Conviction.—By *sect. 7*, on information on oath before any justice of any offence having been committed against the act within six calendar months, the justice may summon the party to appear before two justices, and if he shall not appear, the justices, on proof on oath of the service of the summons on him personally, or leaving it at his usual place of abode, provided it be left twenty-four hours before the time appointed in the summons, may issue their warrant for apprehending the party; or they may, without any previous summons, issue their warrant for that purpose,

and upon the party appearing or being brought before the justices, or on proof on oath of his absconding, the justices may hear and determine the complaint, and on proof of one witness, may convict the party.

Witnesses.]—By *sect. 8*, the justices, at the request in writing of any of the parties, may issue a summons to any witness to appear and give evidence; and in default of his attendance or not submitting to be examined, then, on proof of the service of the summons either personally, or by leaving it twenty-four hours before the time appointed at his usual place of abode, the justices may commit the party to prison for three calendar months, or until he shall submit to be examined.

Conviction and Appeal.]—By *sect. 9*, the conviction is to be in the form set forth in the schedule to the act, and (by *sect. 10*) is to be transmitted to the sessions; and, by *sect. 12*, an appeal is given to the next quarter sessions, upon entering into a recognizance in 10*l.*, with two sufficient sureties in 10*l.*, to prosecute the appeal and abide the judgment of the court.

1. *Conviction and Commitment under the above Act.*

Middlesex, } Be it remembered, that on the — day of —, in the sixth year of
to wit. } her Majesty's reign and in the year of our Lord 1843, A. B. is convicted before us, J. P. and W. P., esquires, two of her Majesty's justices of the peace in and for the said county, for that he the said A. B., on the — day of —, at —, in the county aforesaid, did unlawfully, by threats and intimidation, endeavour to force C. D., a workman employed by E. F. in the manufacture of silk, to depart from his employment and work, contrary to the act made in the sixth year of the reign of King George the Fourth, intituled "An act," &c. [*here set forth the title of the act*]: And we, the said justices, do hereby order and adjudge the said A. B., for the said offence, to be committed to and imprisoned in the house of correction for the said county for the space of three calendar months, and there to be kept to hard labour. Given under our hands and seals the day and year first above written.

2. *Commitment of a Person summoned as a Witness.*

Middlesex, } To the constable of — in the said county, and to the keeper of the
to wit. } house of correction at —, in the said county.
Whereas C. D. hath been duly summoned to appear and give evidence before us, J. P. and W. P., esquires, two of her Majesty's justices of the peace in and for the county aforesaid, on this — day of —, being the time and place appointed for hearing and determining the complaint made by E. F. before us against A. B., of having unlawfully, by threats and intimidation, endeavoured, &c. [*state the offence as in the information*], contrary to the act made in the sixth year of the reign of King George the Fourth, intituled "An act," &c. [*here insert the title of the act*]; And whereas the said C. D. hath not appeared before us at the time and place aforesaid specified

for that purpose, nor offered any reasonable excuse for his default [or “And whereas the said C. D., having appeared before us at the time and place aforesaid specified for that purpose, hath not submitted to be examined as a witness and give his evidence before us touching the matter of the said complaint, but hath refused so to do”]. Therefore we the said justices do hereby, in pursuance of the said statute, commit the said C. D. to the house of correction at —, in the said county, there to remain without bail or mainprize for his contempt aforesaid, for three calendar months, or until he shall submit himself to be examined and give his evidence before us touching the matter of the said complaint, or shall otherwise be discharged by due course of law. And you, the said constable, are hereby commanded to take into your custody the body of the said C. D., and him safely convey to the said house of correction, and him there deliver to the keeper thereof, together with this warrant. And you, the said keeper, are hereby required to receive into your custody in the said house of correction the body of the said C. D., and him safely to detain and keep therein pursuant to this commitment. Given under our hands and seals this — day of —, in the year of our Lord 1843.

3. *Artificers and Workmen in particular Trades.*

- | | |
|--|-----------------------------------|
| 1. <i>Hat, Woollen, Linen, Fustian, Cotton, Iron, Leather, Fur, Hemp, Flax, Mohair, and Silk Manufacturers, and Dyers.</i> | 2. <i>Clock and Watch Makers.</i> |
| | 3. <i>Mines and Collieries.</i> |

1. *Hat, Woollen, Linen, Fustian, Cotton, Iron, Leather, Fur, Hemp, Flax, Mohair, and Silk Manufacturers, and Dyers.*

There are various statutes for the punishment of frauds committed by workmen in many of the above trades, but they seem to be superseded by the subsequent statutes of the 22 Geo. 2, c. 27, and 17 Geo. 3, c. 56, which comprehend all the provisions of the former acts.

Embezzling Materials.]—By 22 Geo. 2, c. 27, s. 1, if any person whatsoever, who shall be hired or employed to make any *Felt* or *Hat*, or to prepare or work up any *Woollen, Linen, Fustian, Cotton, Iron, Leather, Fur, Hemp, Flax, Mohair*, or *Silk* manufactures, or any manufactures made up of any of the said materials mixed one with another, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which he, she, or they shall be respectively entrusted, whether the same or any part thereof be or be not first wrought, made up, manufactured, or converted into merchantable wares, or shall reel false or short yarn (c), and shall be thereof lawfully convicted by the oath of the owner of the goods or materials, or of any other credible

(c) But see 14 Geo. 3, c. 44, *post*, p. 1106.

witness, before any one or more justice or justices of the peace of the county, town, or place where such offence shall be committed, or where the person so charged shall reside, the justices may (by 17 Geo. 3, c. 56, s. 1, which also declares (by *sect.* 2) that the conviction must be by *two justices*) commit the offender to the house of correction or other public prison, to hard labour, for not less than fourteen days, nor more than three months; and in the case of a second or any subsequent offence, for not less than three months, nor more than six months; and may for either offence order the party to be once publicly whipped.

Reeling false Yarn.—By 14 Geo. 3, c. 44, s. 1, so much of the 22 Geo. 2, c. 27, as relates to the punishment for *reeling false and short yarn*, is repealed. And by *sect.* 2, if any person shall reel false or short yarn, and shall be convicted by the oath of the owner of such yarn, or of any other credible witness, before *one (d)* justice of the peace of the county or place where the offence is committed, or where the person charged shall reside, he is liable for the first offence to a penalty not exceeding 20*s.*, nor less than 5*s.*; for a second offence, not exceeding 5*l.*, nor less than 40*s.*; and for a third offence, the justice may commit him to the house of correction or other public prison of such county or place, to hard labour, for one calendar month, and order him to be once publicly whipped at the nearest market town to where the offence was committed, and upon a market day. All the above pecuniary penalties are to go to the party aggrieved.

Conviction.—By *sect.* 3, a general form of conviction is given, which however is very imperfect, and cannot be safely followed by magistrates, except in its directions to specify the offence, and the time and place when and where it was committed, and whether it is the first, second, or third offence.

Appeal.—By *sect.* 5, an appeal is given to the next quarter sessions, upon entering into a recognizance, at the time of conviction, to try the appeal.

Distress.—There being no provision in the above act of 14 Geo. 3, c. 44, for levying the penalties by distress, except after appeal to the sessions, it was thought necessary to pass the 15 Geo. 3, c. 15, which enacts, that the several pecuniary penalties for reeling false yarn, together with the costs attending the prosecution, may be levied by distress, by warrant under the hand and seal of the justice or

(d) *Quere*, see 17 Geo. 3, c. 56, s. 2, *supra*.

justices before whom the offender is convicted, together with the costs of the distress and sale. In default of distress, the offender may be committed to the common gaol or house of correction for one calendar month.

By 17 Geo. 3, c. 11, additional regulations are made as to reeling yarn for the counties of *York, Lancaster, and Chester*, by which act committees of the manufacturers in those counties may from time to time appoint inspectors, to examine the different reels and yarns, and cause any offenders to be prosecuted.

Buying or Receiving Materials from Workmen.—By 22 Geo. 2, c. 27, s. 2, if any person shall buy, receive, accept, or take by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person hired or employed as above-mentioned (e), any thrums or ends of yarn, or any other materials of wool, fur, hemp, flax, cotton, or iron, or any leather, mohair, or silk, whether the same, or any part thereof, be, or be not, first wrought, made up, and manufactured, knowing the person of whom he so buys or receives the said materials to be so hired or employed as aforesaid, and not having first obtained the consent of his employer; or shall offer to sell, pawn, pledge, exchange, or otherwise dispose of the said materials, or shall buy, receive, accept, or take, in any manner whatsoever, of or from any other person whomsoever, any of the said materials, knowing the same to be so purloined or embezzled; the offender being thereof lawfully convicted (by two justices, in manner before prescribed), is liable (by 17 Geo. 3, c. 56, s. 3) for the first offence to a penalty of not more than 40*l.*, nor less than 20*l.*; to be applied, first, in defraying the expenses of the prosecution, and then in making satisfaction to the party injured, as the justices shall think proper, and afterwards, so much as the justices shall think fit to the informer, not exceeding 10*l.*, and the remainder to the poor of the parish, or for the use of such public charity as the justices shall appoint. In default of payment, the justice may commit the party to the house of correction, or other public prison, to hard labour, for not more than six months, nor less than three; or they may imprison the offender for three days, exclusive of the day of commitment, and order him to be once publicly whipped. For a second offence of this nature, the justices are directed by the 17 Geo. 3, c. 56, s. 4, not to convict the party, but to commit him for trial at the next quarter sessions, when if convicted, he is liable to a penalty not more than

(e) See *sect. 1, ante*, p. 1105.

100*l.*, nor less than 50*l.*, and in default of payment, to be imprisoned to hard labour for not more than six months, nor less than three; or he may be imprisoned three days, as above, and once publicly whipped.

Selling or Pawning Materials.—By 17 Geo. 3, c. 56, s. 5, if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, or offer to sell, pawn, &c. any such materials as aforesaid, whether wrought or unwrought, mixed or unmixed, knowing them to have been purloined or embezzled, the offender is liable to the same punishment as for receiving purloined or embezzled materials, knowing them to have been purloined or embezzled.

Conviction of suspected persons.—By sect. 6, reciting that purloined or embezzled materials are frequently worked up or otherwise disposed of, which renders it difficult to convict the offenders; it is enacted, that when any person shall be brought or charged upon oath before any two justices, with being suspected of, or with having purloined or embezzled, or with having received any such materials as aforesaid, whether the same be wrought or unwrought, mixed or unmixed, knowing the same to have been either purloined or embezzled, or else received from some person not entitled to dispose thereof; and it shall be made to appear upon the oath of one credible witness, to the satisfaction of such justices, that such person hath purloined or embezzled, or hath received any such materials, knowing the same to have been purloined or embezzled, or received from some person not entitled to dispose thereof; the justices may convict the party of any such offence, although no proof shall be given to whom such materials belong; and the offender is liable to the same punishment as a party convicted of buying or receiving such materials, knowing them to have been purloined or embezzled.

Neglecting Work, or not returning Materials.—By sect. 7 (repealing the 7th section of the 22 Geo. 2, c. 27), if any person entrusted with any of the materials before-mentioned (*f*), in order to prepare, work up, or manufacture the same, shall not use all such materials for that purpose, and shall neglect or delay for the space of eight days after the same shall be worked up, to return so much of the materials as shall not be used as aforesaid, to the person entrusting him therewith, such neglect or delay shall be deemed a purloining or embezzling of such materials; and the party, being convicted thereof in the manner before prescribed, shall suffer the like punishment as is before directed to be inflicted for purloining or embezzling.

(*f*) See *ante*, p. 1105.

Being employed by another Master, before completion of Work.]

—By sect. 8 (repealing the 9th section of the 22 Geo. 2, c. 27), if any person being hired, retained, or employed, to prepare or work up any materials, whether mixed or unmixed, for any master, shall wilfully neglect or refuse the performance thereof for eight days successively; or, having taken in any materials (whether mixed or unmixed) for manufacture from one master, or two or more masters being co-partners, shall afterwards take in any materials (whether mixed or unmixed) for manufacture from any other master or masters, or shall procure, or permit himself to be employed or retained in, any other occupation or employment whatsoever, sooner than eight days before the completion of the work first taken in; then such person being thereof lawfully convicted, by the oath of one credible witness, before *two* justices of the peace for the county, town, or place where the offence shall be committed, shall be sent to the house of correction, or other public prison, there to be kept to hard labour, not exceeding three months, nor less than one month.

Receiving Materials in fictitious Names, &c.]—By sect. 9, if any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured, or shall receive in his own name any of such materials to be manufactured by himself, and afterwards deliver the same, or any part thereof, to any other person to be manufactured, without the consent of the owner; or if any carrier, or other person, employed to deliver any such materials to any workman to be prepared or wrought up, shall designedly deliver the same to any other person than the person to whom they were ordered or intended to be delivered by the owner; the offender is liable to the same punishment as is imposed by section 7.

Power to issue Search Warrant.]—By sect. 10, any two justices of any county, town, or place, upon complaint made to them on oath by one credible person, that there is cause to suspect that any such purloined or embezzled materials, whether mixed or unmixed, wrought or unwrought, are concealed in any dwelling-house, out-house, yard, garden, or other place or places, may by virtue of a warrant under their hands and seals cause every such place to be searched, in the day-time, and if any such materials suspected to be purloined or embezzled shall be found therein, may cause the same, and the person or persons in whose premises the same shall be found, to be brought before any two justices for the same county, town, or place; and if the said person or persons shall not give an account,

to the satisfaction of such justices, how he, she, or they came by the same, they are to be deemed guilty of a *misdemeanor*, and to be punished in manner thereafter mentioned (*g*), although no proof shall be given to whom such materials belong.

Peace Officers may apprehend suspected Persons.—By sect. 11, every peace officer, constable, headborough, or tithingman, in every county, city, town corporate, or other place, where there shall be officers, and every beadle within his ward, parish, or district, and every watchman, during such time only as he is on duty, shall and may apprehend, or cause to be apprehended, every person who may reasonably be suspected of having, or carrying, or any ways conveying, at any time after sun-setting and before sun-rising, any of such materials suspected to be purloined or embezzled, and the same, together with such person, as soon as conveniently may be, convey before any two justices of the peace for the county, town, or place, within which the suspected person shall be apprehended. If the person so apprehended shall not produce the party duly entitled to dispose thereof, from whom he bought or received the same, or some other credible witness to testify upon oath to the sale or delivery of such materials, or shall not give an account, to the satisfaction of such justices, how he came by the same; he is also to be deemed and adjudged guilty of a *misdemeanor*, and to be punished in manner thereafter mentioned (*g*), although no proof shall be given to whom such materials belong.

Justices may give time to the party to produce the person from whom he received the Materials.—By sect. 12, in either of the two cases last before mentioned, when any person who shall be brought before two justices shall request them to appoint a reasonable time to produce the person duly entitled to sell or dispose of the same, of or from whom he bought or received the same, or some one or more credible witness or witnesses to prove the sale or delivery thereof; then the justices may appoint such reasonable time, and issue out a summons to the constable or other peace officer of the parish or place where such person or witness shall respectively reside, requiring them to appear before two justices, at such time and place as shall be appointed, in order to be examined and give evidence on oath of the several matters aforesaid; but such person at the time of making such request, shall enter into a recognizance with or without sureties, as such justices shall think proper, for his appearance before them at the time so to be set; or, for want of such recognizance, shall be

committed until the time that shall be appointed by the justices for the appearance of such party or witness; and if at such appointed time such person shall be convicted of any of the offences aforesaid, then he shall suffer such punishment as is before directed to be inflicted on persons guilty of such offences.

How Materials to be disposed of.—By *sect. 13*, where any person shall be convicted of a misdemeanor in either of the two cases last before mentioned, the justices may cause the materials so found or seized to be deposited in the hands of the churchwardens or overseers of the place where they shall be so found or seized, or in any other convenient place, for any time not exceeding thirty days; and in the mean time may order one of the churchwardens and overseers to insert an advertisement in some one or more of the public newspapers usually published or circulated in or near such place, or otherwise to cause notice to be given by some public crier, and by fixing on the church or chapel door notice describing such materials, and where the same are so deposited, to the end that persons having lost such materials, or any reputable person in their behalf, may come and claim the same; and in case any person can prove his property in them upon oath, to the satisfaction of any two justices, then they shall order restitution of such materials to the owner thereof, after paying the reasonable charges of removing, depositing, and giving public notice of the same; but if, before the end of the said thirty days, no person shall come and prove his property in such materials, nor any reputable person on his behalf, then the justices shall order the same to be sold for the best price that can reasonably be had, and after deducting such charges as aforesaid, together with the charges of sale, one moiety of the money arising from such sale shall be given to the person who shall apprehend or prosecute the offender, as the justices shall appoint; and the other moiety thereof either to the parish, town, or place where the conviction shall be, or to such public charity as the justices shall appoint.

Penalties for the above Offences.—By *sect. 14*, every person deemed and adjudged guilty of a *misdemeanor* under *sects. 10, 11, and 12*, shall for every such misdemeanor forfeit for the first offence the sum of 20*l.*; for the second offence the sum of 30*l.*; and for every subsequent offence the sum of 40*l.*; to be levied by distress and sale, by the warrant of the convicting justices, one moiety to be paid to the informer, and the other moiety to the poor of the parish where such conviction shall be, or to such public charity as

the justices shall appoint; in default of distress, the justices may commit the offender to the common gaol or other prison, or house of correction, within their jurisdiction, for the space of one month for the first offence, two months for the second, and six months for every subsequent offence.

Owner of Materials may search the Shops of his Workmen.—By *sect. 15*, the owner of any such materials may demand entrance, and enter at all seasonable hours in the day-time, into the shop or outhouse of any person employed by him to work up any of the said materials, or other place where the work shall be carried on, and there inspect the state and condition of such materials; and, in case of refusal by any such person so employed to permit such entrance or inspection, he is liable to a penalty, not exceeding 40s. nor less than 10s., to be recovered and applied in the same manner as for the misdemeanor of being in the possession of such materials without being able to account satisfactorily for such possession.

Tools for working, and Drugs for dying.—By *sect. 16*, every provision contained in the 22 Geo. 2, c. 27, in respect to the said materials, so far as that act is not varied by the present one,—and all the provisions in the present act contained, in respect to such materials,—are declared to be applicable to any tools and implements with which any person shall be entrusted for making, working up, or manufacturing such materials, and also to any drugs or ingredients with which he may be entrusted, for the purpose of dying, preparing, or manufacturing such of the aforesaid materials as are usually dyed, prepared, or manufactured.

Frauds by Journeymen Dyers.—By *sect. 17*, if any person hired, retained, or employed as a journeyman *dyer*, or as a servant or apprentice, in the *dying* of any *felt* or *hat*, or any *woollen*, *linen*, *fustian*, *cotton*, *leather*, *fur*, *flax*, *mohair*, or *silk* materials, whether the same shall be wrought or unwrought, or shall be mixed or unmixed with other of the same materials, shall, without the consent of his master or employer, wilfully dye any of such materials, or without such consent shall wilfully receive any such materials for the purpose of dying the same, whether the same shall be dyed or prepared for dying, he is liable to a penalty of 10s. for the first offence, of 20s. for the second offence, and of 40s. for every subsequent offence. If any person shall procure any such materials to be dyed by any person so hired, retained, or employed as a journeyman, servant, or apprentice, without the consent of his master or employer, or shall

offer any such materials to any such journeyman, servant, or apprentice, for the purpose aforesaid, he is liable, on conviction by the oath of one witness before two justices, to a penalty of 5*s.* for the first offence, 20*s.* for the second offence, and 4*l.* for every subsequent offence, to be paid to the informer; and, in case of non-payment on conviction, to be committed not exceeding one month.

Witnesses.—By *sect. 18*, the inhabitants of any parish in which any offence is committed against either of the acts of 22 Geo. 2, c. 27, or 17 Geo. 3, c. 56, are declared to be competent witnesses.

Apprehension of Offenders.—By *sect. 19*, any justice, upon complaint to him made, upon oath, of any offence committed against the act, may issue his warrant for apprehending and bringing before two justices the person charged with such offence; which two justices are required to hear and determine the complaint.

Appeal.—By *sect. 20*, an appeal is given to the party aggrieved from a conviction under either of the acts; and the justices are required to make known to him, at the time of such conviction, his right to appeal to the next quarter sessions (such person at the time of such conviction giving to the justices notice in writing of his intention to appeal, and also entering into a recognizance, with sufficient sureties, to try such appeal). In default of such recognizance, the justices may commit the party to the house of correction or other public prison of the county or place, until the said next quarter sessions, unless such recognizance shall be sooner entered into.

Conviction.—By *sect. 21*, so much of the 22 Geo. 2, c. 27, as prescribes a form of conviction, is repealed; and a new form of conviction is given for any offence either under that or the subsequent act; which new form however is too imperfect to be strictly followed, as it contains no adjudication of the penalty, or the punishment.

By *sect. 22*, no proceedings are to be quashed for want of form, or be removable by *certiorari*; and by *sect. 25*, there is the usual limitation as to actions.

Workmen wilfully spoiling Work.—By 12 Geo. 1, c. 34, s. 2, if any wool-comber, weaver, servant, or person hired, retained, or employed in the art or mystery of a wool-comber or weaver, shall wilfully damnify, spoil, or destroy, without the consent of the owner, any of the goods, wares, or works committed to his charge, or wherewith he shall be intrusted; he is liable to pay to the owner of the property double the value, to be levied by distress by warrant

under the hands and seals of two justices, and in default of distress to be committed to the house of correction to hard labour, not exceeding three months, or until satisfaction be made to the party aggrieved.

By *sect. 5*, an appeal is given to the next quarter sessions, giving reasonable notice of such appeal.

By 22 Geo. 2, c. 27, s. 12, the above enactment of the 12 Geo. 1, c. 34, s. 2, is extended to *journeymen dyers, journeymen hot-pressers*, and all other persons whatsoever, employed in or about any of the woollen manufactures of the kingdom, and also to journeymen, servants, workmen and labourers, and all other persons whatsoever, employed in the making of *felts, or hats*, or in or about any of the manufactures of *silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron, or leather*, or any manufactures made up of any of *such materials mixed one with another*.

Certain Frauds by Workmen in Woollen Manufactures.—By 14 Geo. 3, c. 25, various regulations are made respecting workmen employed in woollen manufactures; but as most of these provisions are embodied in the subsequent act of 17 Geo. 3, c. 56, it will be only necessary to specify those not included in that act. By 14 Geo. 3, c. 25, s. 1, if any picker, scribbler, spinner, or weaver, or other person in any way employed in or about the making or manufacturing of *woollen cloth*, or in preparing materials for that purpose, shall fraudulently steam, damp, or water the wool or yarn delivered to him to be worked up; or if any person shall take off, cut, or pick out the list, forrel, or other mark of any piece of cloth; he is liable, on conviction before some justice or justices of the county or place where the offender shall reside, on the oath of one witness, to be committed to the house of correction for one calendar month.

Search Warrant.—By *sect. 2*, if any person shall be suspected of, and charged on such suspicion with, having embezzled and kept back, by means of fraudulently damping, steaming, or watering the wool and yarn delivered out to him, and oath shall be made thereof before one justice, a search warrant may be issued to search in the day time the place of dwelling of the offender, and such other place where the clothier or his servant shall make oath that there is just cause to suspect the materials are secreted and lodged; and if upon such search any such wool or yarn, or any cloth, with the list, forrel, or other marks taken off, cut, or picked out shall be found, the con-

stable may seize the same, and apprehend the person in whose custody or possession the same shall be found, and bring him before a justice; and unless he shall give a good account how he came by the same, to the satisfaction of the justice, he is liable to be committed to the house of correction for one calendar month; and the wool, yarn, or cloth so seized, and not accounted for, is to be delivered over to the churchwardens or overseers of the parish where the same was seized, to be by them sold and applied to the use of the poor.

Justice to allow reasonable time for producing parties.—By *sect. 3*, in case the person accused shall request of the justice to appoint a reasonable time to produce the person of whom he received the materials, or a witness to prove the sale or delivery thereof, the justice may appoint such time, and summon a witness; but the party must enter into a recognizance for his appearance before the justice at the time appointed, or stand committed; and if at the appointed time he shall be convicted, he is liable to be committed to the house of correction for one calendar month.

Conviction and Appeal.—By *sect. 8*, a general form of conviction is given, but too imperfect to be strictly followed; and by *sect. 9*, an appeal to the next quarter sessions, the party giving notice in writing to the justice, and entering into a recognizance with sufficient sureties.

Second Offence.—By *sect. 5*, if upon any information against an offender, it shall appear to the justice that he hath been before convicted of an offence against the act, the justice is in that case not to convict the party, but to commit him to the house of correction till the next quarter sessions, or until he shall have entered into a recognizance to appear at such sessions, and to bind over the informer to prosecute; and if then found guilty, he is liable to be imprisoned not exceeding three calendar months. And, by *sect. 6*, if it shall appear to the justices at sessions, that the party has been *already convicted at some quarter sessions* of any offence against the act, then he may be committed to the house of correction not exceeding six calendar months, and also be once publicly whipped.

Limitation of Proceedings.—Any proceeding must be by information upon oath, within three calendar months after the offence is committed; and no proceedings are to be quashed for want of form, or be removable by *certiorari*.

1. *Conviction of a Pawnbroker under the 22 Geo. 2, c. 27, s. 2, and 17 Geo. 3, c. 56, s. 3 and 6, for receiving embezzled Silk (d).*

County of } Be it remembered, that on the — day of —, A. D. 1843, at —,
 —. } A. B., of the parish of —, in the county of —, is convicted before
 us, J. P. and W. P., esquires, two of her Majesty's justices of the peace in and for the
 said county of —, for that the said A. B., on the — day of — in the year afore-
 said, at — aforesaid, in the said county of —, did unlawfully receive and take by
 way of pawn a certain quantity of silk, to wit, three bobbins of silk, the property of
 C. D., and of the value of 10*l.*, of and from one E. F., who was then and there hired
 and employed by the said C. D. to prepare and work up for him the said silk, he, the
 said A. B., then and there well knowing the said E. F. to be so hired and employed as
 aforesaid, and the said A. B. not then having first obtained the consent of the said
 C. D. in that behalf, and the said C. D. not having at any time given his consent to
 the pawning of the said silk, or any part thereof; contrary to the form of the statute in
 such case made and provided. And we the said justices do hereby adjudge, that the
 said A. B. for his said offence, it being his first offence, hath forfeited the sum of 40*l.*,
 to be applied as the law directs; and in default of payment of the same, we, the said
 justices, do further adjudge that the said A. B. be committed to the house of correction,
 to be kept to hard labour for the space of six months, unless the said penalty shall be
 sooner paid. Given under our hands and seals the day and year first above written.

2. *Conviction on 17 Geo. 3, c. 56, ss. 10 and 14, for having in Possession embezzled Materials, without giving good Account thereof (e).*

Middlesex, } Be it remembered, that on the — day of —, in the year of our
 to wit. } Lord 1843, at —, A. B., of — in the said county, draper, is convicted
 before us, J. P. and W. P. esquires, two of her Majesty's justices of the peace in and
 for the said county; for that, on the — day of —, in the year aforesaid, at, &c.
 upon complaint made to us upon oath by one C. D., being a credible person, that
 there was cause to suspect that certain purloined and embezzled materials of woollen
 web were concealed in the dwelling-house of the said A. B. aforesaid, we, the said
 justices, did by virtue of a warrant under our hands and seals cause the said dwelling
 house to be searched in the day time; and upon such search, a large quantity, to wit,
 twenty pounds weight of woollen web, suspected to have been purloined and embezzled,
 were found in the same dwelling-house; and thereupon the said woollen web, and the
 said A. B., were brought before us, the said justices, on this — day of —; and the
 said A. B. being examined by us, the said justices, as to his possession of the said
 woollen web, hath not given any account, to the satisfaction of us, or either of us,
 how he came by the said woollen web; contrary to the statute in that case made and
 provided; We, the said justices, do therefore adjudge and declare that the said A. B.
 is guilty of a misdemeanor, within the meaning of the statute in such case made and
 provided, and hath thereby forfeited the sum of 20*l.*, being his first offence; one moiety
 of which said sum we direct to be paid to the said C. D., being the informer in this
 behalf, the other moiety thereof to the churchwardens and overseers of the poor of the
 said parish of — in which the said A. B. is convicted, for the use of the poor of the
 said parish.

(d) See *ante*, p. 1107, 1108.

(e) See *ante*, p. 1109, 1111.

3. *The like, where the Justices appoint a time for Defendant to produce a person to account for the Defendant's possession of the Materials, under sect. 12 (f).*

[*Proceed as in the last precedent to the statement of the materials, and the defendant being brought before the justices*]: And the said A. B. did then and there request of us, the said justices, to appoint a reasonable time to produce one E. F., whom he alleged to be the person duly entitled to sell and dispose of the said materials, of and from whom he bought and received the same, and also one G. H., whom he alleged to be a credible witness, to prove the sale and delivery thereof; We, the said justices, did therefore appoint the said — day of — for this purpose, and did accordingly issue our summons to the constable of the parish of —, in the said county, where the said E. F. and G. H. did reside, to appear before us on the said — day of —, to be examined and give evidence on oath as to the matter aforesaid: And now on this — day of —, the said E. F. and G. H., having appeared before us and been duly sworn and examined, did severally depose that they had not any knowledge of the said materials so found in the said dwelling house of the said A. B. as aforesaid; and the said A. B. hath not given any account, to the satisfaction of us the said justices, how he came by the said woollen weft, contrary to the statute in that case made and provided: We, the said justices, do therefore adjudge, &c. [*conclude as in the last precedent.*]

4. *Conviction of a Workman, under 17 Geo. 3, c. 56, s. 7, for not returning Materials not used (g).*

Middlesex, } Be it remembered, &c. [*as in form No. 1.*] For that the said A. B.,
to wit. } on, &c., at, &c., being a person then and there intrusted with twelve
'pounds weight of unwrought silk, in order to prepare, work up, and manufacture the
same for C. D., of, &c., and not having then and there used all the said silk for that
purpose, did then and there neglect and delay, for the space of eight days after a cer-
tain quantity, to wit, five pounds weight of the said silk, were so prepared, worked up,
and manufactured as aforesaid, to return to the said C. D. the remainder of the said
silk which was not so used as aforesaid, although oftentimes required so to do; contrary
to the form of the statute in such case made and provided; And we the said justices
do hereby adjudge, that the said A. B. for his said offence, it being his first offence,
shall be committed to the house of correction at — in the said county, there to be
kept to hard labour for the space of three months. Given under our hands and seals
the day and year first above written.

2. *Clock and Watch Makers.*

Penalty for purloining or embezzling.—By 27 Geo. 2, c. 7, s. 1, if any person whatsoever, who shall be hired or employed by any person practising the trade of watchmaking, or clockmaking, or any part or branch thereof, to make, finish, alter, repair, or clean any clock, watch, or any part thereof, or who shall be intrusted with any gold, silver, or other metal or material, to be, or that shall be, in the

whole or in part wrought or manufactured for any part of a clock or watch, or any diamond or other precious stone, to be, or that shall be, set or fixed in or about any clock or watch, shall purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the above articles or materials, and shall be thereof convicted by the oath of the owner of such goods, or of any other credible witness, before any one justice of the county or place where such offence shall be committed, or where the person so charged shall reside; every such offender shall for the first offence forfeit 20*l.*, which if not forthwith paid, the justice may commit the party to the house of correction, or other public prison of such county or place, there to be kept to hard labour for the space of fourteen days, unless such forfeiture shall be sooner paid; and if, within two days before the expiration of such fourteen days, such forfeiture shall not be paid, the justice may order the offender to be publicly whipped at the market place, or some other public place of the town or place where he shall be committed. In case of a conviction for a second offence, the party is liable to forfeit 40*l.*, which if not forthwith paid, the offender may then be committed to hard labour not exceeding three months, nor less than one month, and if, within seven days before the expiration of such commitment, the forfeiture shall not be paid, the justice may order him to be twice, or oftener, publicly whipped.

Penalty on Receivers.—By *sect. 2*, if any person shall buy, receive, accept, or take by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person, any clock or watch, or any part thereof, or any gold, silver, or other metal or material as aforesaid, whether the same, or any part thereof, be, or be not, wrought or manufactured, or any diamond or other precious stone, which shall have been intrusted with any person hired or employed as aforesaid, the party so receiving such materials, knowing the same to be so purloined or embezzled, being thereof lawfully convicted in manner before prescribed, is liable to the same punishment for a first and second offence, as is imposed by the first section for purloining or embezzling.

Application of Penalties.—By the *same sect.* the respective forfeitures, when recovered, after satisfaction shall have been made thereout to the party injured, together with such costs of prosecution as shall be judged reasonable by the justice, shall be paid and applied to and for the use of the poor of the parish or place where the person so convicted shall reside.

Appeal.]—By *sect. 3*, an appeal is given to the next quarter sessions, upon the party, at the time of such conviction, entering into a recognizance to prosecute such appeal, with two sufficient sureties, in double the amount of the penalty.

By *sect. 4*, the following general form of conviction is given, which however is too imperfect to be strictly followed (*h*).

Middlesex, } Be it remembered, that on the — day of — in the — year of
to wit. } her Majesty's reign, A. B. was convicted before me [or "us"] — of
her Majesty's justices of the peace for the said county of — [or "for the —
riding," or "division of the said county of —," or "for the city, liberty, or town of
—, in the said county of —," *as the case shall be,*] of purloining, embezzling,
secreting, selling, pawning, exchanging, or unlawfully disposing of, or of buying, re-
ceiving, or taking to pawn, [*as the case shall happen to be, specifying the respective*
goods, materials, or effects,] the property of C. D., of —, in the county of — (*i*).
Given under my hand and seal [or "our hands and seals,"] the day and year aforesaid.

The conviction is not removable by *certiorari*.

Warrant of Apprehension.]—By *sect. 5*, any justice, upon complaint to him made upon oath, of any offence committed against the act, ~~may~~ issue his warrant for apprehending and bringing before him, or before any other justice, the person charged with such offence, in order to hear and determine the matter of every such complaint, and to proceed to conviction and judgment thereupon.

3. *Mines and Collieries.*

Working Coal, &c. contrary to Agreement.]—By 39 & 40 Geo. 3, c. 77, s. 3, if any person making any bargain, or entering into any contract or agreement in writing, for raising or getting any coal, culm, iron-stone, or iron ore, shall wilfully, and to the prejudice of the owner, raise, get, or work any such coal, culm, iron-stone, or iron ore, in a different manner to his or their stipulations in respect thereto, and contrary to the directions and against the will of the owner, or his agent having the care thereof; or shall desist or refuse to fulfil the engagements they have entered into; the offender, being convicted on the oath of one credible witness before one justice, on complaint of the owner, or his agent, and not otherwise, is liable to a penalty not exceeding 40*s.*; together with the charges previous to and attending such conviction; and upon non-payment thereof, to be committed to the common gaol not exceeding six months, or until the penalty

(*h*) See *Conviction*, *ante*, p. 195.

(*i*) The adjudication of the punishment should be here added, *as ante*, p. 1116.

and charges shall be paid; and upon such conviction, every such bargain, contract, or agreement shall become void.

Fraudulently stacking Coal, &c.—By *sect. 4*, if any person shall wall or stack, or cause to be walled or stacked, any coal, iron-stone, or iron ore, in any false or fraudulent manner, with an intent to deceive his employer; or shall take and remove any iron-stone, or iron ore, with intent to defraud the person who shall have raised the same; and shall be thereof convicted, upon the oath of one credible witness before any one justice for the county wherein such offence shall have been committed; it shall and may be lawful for such justice to commit him to the house of correction or common gaol not exceeding three months.

Application of Penalties.—By *sect. 6*, all forfeitures imposed by the act are to be distributed between the informer and the overseers of the parish where the offence is committed, for the use of the poor, in such proportion as the justice shall think fit.

Witnesses, &c.—By *sect. 7*, the evidence of the inhabitants of the parish where the offence is committed is to be taken and allowed. And (by *sect. 8*) a general form of conviction is given.

By *sect. 9*, prosecutions must be begun within nine calendar months after the offence committed.

Appeal.—By *sect. 10*, persons aggrieved may, within three calendar months after the conviction, appeal to the quarter sessions (except on orders of commitment); and no proceedings are to be quashed for want of form, or be removable by *certiorari*.

Conviction of a Miner, under Sect. 3 of the above Act, for working Coal contrary to his agreement.

Durham, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, at — in the county aforesaid, A. B., of, &c., miner, having
been brought before me, J. P., esquire, one of her Majesty's justices of the peace in
and for the said county, on the complaint of C. D., of, &c., is, on due proof, convicted
before me the said justice, for that he the said A. B., on the — day of —, in the
year aforesaid, at — in the said county, having then and there entered into a certain
contract and agreement in writing with the said C. D. for raising and getting coal,
did wilfully, and to the prejudice of the said C. D., raise, get, and work a large
quantity, to wit, two tons of the said coal, in a different manner to his stipulation in
respect thereto, and contrary to the directions and against the will of the said C. D.,
against the form of the statute in that case made and provided: And I, the said justice,
do therefore adjudge the said A. B. to forfeit and pay for his said offence the sum of
40s., and also the further sum of — for the charges of this conviction; and in default
of payment of the said sums to be committed to the common gaol at — in the said

county, for the space of two months, or until the said two sums shall be paid: And I, the said justice, do further adjudge and declare, that the said contract and agreement so entered into by the said A. B. with the said C. D. as aforesaid shall from henceforth become void and of no effect. Given under my hand and seal, the day and year first above mentioned.

J. P. (L.S.)

Females not to be employed.—By 5 & 6 Vict. c. 99, s. 1, it is declared to be unlawful for any owner of any mine or colliery whatsoever to employ any female person therein, or permit any female person to work, or be therein for the purpose of working therein, other than such as were at or before the passing of the act so employed. And, after three calendar months from the passing of the act, it is declared to be unlawful to employ any female person, who at the passing of the act was under the age of eighteen years, within any mine or colliery, or to permit such person to work or be therein as aforesaid; and any indentures of apprenticeship, whereby any such female person shall be bound to work, or be liable to be called on to work, in any mine or colliery, shall, at the expiration of three calendar months from the passing of the act, be absolutely void. And, after the 1st March, 1843, it shall not be lawful to employ any female person whatsoever within any mine or colliery, or to allow or permit any female person to work or be therein as aforesaid; and every indenture of apprenticeship, or other contract or engagement, whereby any female person whatsoever shall be bound to work, or be liable to be called on to work, therein, shall from and after the 1st March, 1843, be absolutely void.

Boys under Ten, not to be employed.—By sect. 2, after the 1st March, 1843, it shall not be lawful for any owner of any mine or colliery to employ therein any male person under the age of ten years, or to permit any such male person to work, or be therein for the purpose of working therein, other than such as at the passing of the act shall have attained the age of nine years, and were at or before the passing of the act employed within such mine or colliery.

Regulations as to Apprentices.—By sect. 4, after the passing of the act, no person shall take any apprentice who shall be bound to work, or be liable to be called on to work, or be otherwise occupied, within a mine or colliery, who shall be under the age of ten years, or for a longer term of apprenticeship than eight years, except as the apprentice of a mason, joiner, or engine-wright, or other mechanic, whose services may be required occasionally below as well as above ground; and every indenture of apprenticeship, whereby any person

shall be hereafter bound contrary to the provisions of the act, shall be void. When any person, then serving under articles of apprenticeship within any mine or colliery, shall attain the age of eighteen years, he shall be discharged from such apprenticeship, and the articles of apprenticeship shall become absolutely null and void.

Penalties.]—By *sect. 5*, every person offending against any of the above provisions, shall forfeit a sum not more than 10*l.*, nor less than 5*l.*, for every person employed or suffered to be in a mine or colliery contrary to the above provisions.

Penalty for misrepresenting the Age of any Party.]—By *sect. 6*, if it shall appear, on inquiry before any justices under the provisions of the act, that any person under the age hereinbefore specified has been employed in any colliery, on the representation of the parent or natural guardian of such person that he was above the age before specified; and if it shall appear to such justices, that such person was so employed under the *bonâ fide* impression and belief on the part of the employer that he was not under the age so specified, the justices may remit penalty, as against the employer, and summon the parent or natural guardian of the person employed to appear before them, and on conviction of such parent or guardian of having wilfully misrepresented the age of the person employed, he is liable to a penalty not exceeding 40*s.*

Regulation as to Steam Engines.]—By *sect. 8*, where there shall be any entrance to a mine or colliery by means of a vertical shaft or pit, or inclined plane, or where there shall be any communication within any part of a mine or colliery to any other part thereof by a vertical shaft or pit, or inclined plane, then it is unlawful to allow any person, other than a male of the age of fifteen years and upwards, to have charge of any steam engine or other engine, windlass, or gin (whether driven or worked by manual labour or any other power whatsoever), or to have charge of any part of the machinery, ropes, chains, or other tackle of any such engine, by or by means of which persons are brought up or passed down any such vertical shaft or pit, or inclined plane; under a penalty not exceeding 50*l.*, nor less than 20*l.*

Windlass worked by a Horse.]—By *sect. 9*, in the case of a windlass or gin worked by a horse, or other animal, the person on the bank, under whose direction the driver of the animal used for such

windlass or gin shall act, shall for the purposes of the act be deemed and taken to be the person having the charge thereof.

Penalty for payment of Wages at Public Houses.—By sect. 10, after the expiration of three months from the passing of the act, no proprietor or worker of any mine or colliery, or other person, shall pay or cause to be paid any wages, or money in respect of wages, for work or labour, or service done in or about any mine or colliery, to any person employed in or about such mine or colliery, or to any person whatever entitled to, or having authority, or claiming to have authority, to receive such wages, at or within any tavern, public house, beer-shop, or other house of entertainment, or any office, garden, or place belonging thereto, or occupied therewith; and all payments so made are declared to be of no effect whatever. And (by sect. 11) the person, to whom such wages were due or payable, may recover and receive the same in like manner as if no such payments had been made; and (by sect. 12) the owner of any mine or colliery, or any person liable or entrusted or employed to pay any such wages or money, is liable to a penalty not exceeding 10*l.*, nor less than 5*l.*

Liability of Agents.—By sect. 13, if any offence shall be committed, for which the owner of any mine or colliery is made responsible, and it shall be made to appear to the satisfaction of any justices that the offence has been committed by or under the authority of some agent, servant, or workman of such owner, or by or under the authority of a contractor, without the personal consent, concurrence, or knowledge of such owner, the justices may summon such agent, servant, workman, or contractor before them to answer for such offence; and if convicted, he is liable to the above penalties in lieu of the owner.

Form of proceeding.—By sect. 15, in any information, summons, or warrant issued under the act, it is unnecessary to set forth the name or other designation of all the partners in any mine or colliery, or in the working thereof; but it is sufficient to insert the name of the ostensible proprietor, occupier, lessee, or adventurer, or title of the firm or company by which the owners, lessees, or workers of such mine or colliery are usually designated and known.

Service of Summons, &c.—By sect. 16, the service of any summons or warrant, by delivering the same or a copy thereof at the office or counting-house of any mine or colliery, shall be good and

sufficient service thereof on the owner of such mine or colliery. All complaints for offences against the act must be preferred within three calendar months next after the commission of the offence.

Recovery and Application of Penalties.—By *sect. 17*, all convictions for penalties may be had before two justices of the peace acting for the county or place where the offence shall happen; and such penalties, and the costs and charges attending the recovery thereof, may be levied by distress, by warrant under the hands and seals of two justices, which warrant may be granted, upon conviction of the offender on the oath of one credible witness; and the penalties, costs, and charges are to be paid, the one half to the informer, and the other half to the overseers of the parish, township, or place where the offence shall have been committed, in aid of the poor rate.

Where Penalty not paid.—By *sect. 18*, the convicting justices may adjudge that the offender shall pay the penalty, together with costs, either immediately, or within such period as they shall think fit; and in default of payment, and in the event of no sufficient distress, he may be imprisoned in the common gaol or house of correction, with or without hard labour, not exceeding two calendar months.

Witnesses.—By *sect. 19*, inhabitants of parishes are not incompetent as witnesses; and (by *sect. 20*) no distress is to be unlawful for want of form.

Appeal, &c.—By *sect. 21*, an appeal is given to the next quarter sessions holden not less than fifteen days after the day of the conviction, upon the appellant giving to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within seven days after the conviction, and seven clear days at the least before the sessions, and either remaining in custody until the sessions, or entering into a recognizance with two sufficient sureties to try such appeal.

By *sect. 22*, no conviction is removable by *certiorari*, and no warrant of commitment is to be void, if it allege that the party has been convicted, and there be a good and valid conviction.

Sessions.

THERE are four different kinds of sessions holden by justices of the peace: 1. The *General Sessions*, which may be holden at any time of the year, for the general business of the county; 2. The

General Quarter Sessions, which are holden at stated times, in the four quarters of the year, as appointed by statute; 3. *Special Sessions*, which are convened by reasonable notice to the other magistrates of the division, and are holden on a special occasion, for the exercise of some particular branch of their authority; and 4. *Petty Sessions*, which may be holden by two or more justices, on their mere private agreement, for the transaction of such business as two justices are authorized or required to perform. Although beyond the compass of this work to deal with the two first descriptions, it may be useful just to notice the times appointed by statute for holding the Quarter Sessions, and the particular offences, which it is now declared by statute shall not be tried there, in order that the magistrate may know what prisoners should be committed for trial at the assizes, and what for the sessions (*i*).

By the 11 Geo. 4 & 1 Will. 4, c. 70, s. 35, the Quarter Sessions are directed to be holden in the first week after the 11th October, the first week after the 28th December, the first week after the 31st March, and the first week after the 24th June. If any of these days fall upon a Sunday, the sessions cannot be holden in the same week, but must be holden in the next following week (*k*).

What Offences are not cognizable at the Sessions.—By 5 & 6 Vict. c. 38, s. 1, it is declared, that neither the justices of the peace, nor the recorder of any borough shall, at any sessions of the peace, or at any adjournment thereof, try any person for any treason, murder, or capital felony, or for any felony, which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or for any of the following offences:—

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person, or government, or against either house of parliament.
3. Offences subject to the penalties of *præmunire*.
4. Blasphemy, and offences against religion.
5. Administering or taking unlawful oaths.
6. Perjury, or subornation of perjury.
7. Making, or suborning any other person to make, a false oath, affirmation, or declaration punishable as perjury, or as a misdemeanor.

(*i*) For further information as to the quarter sessions, see Mr. Serjeant Talfourd's able work, of Dickenson's Guide to the Quarter Sessions, 5th edit., and

Chitty's edit. of Burn's Justice, vol. v. p. 582.

(*k*) 1 Hale, 49.

8. Forgery.
9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern.
10. Bigamy, and offences against the laws relating to marriage.
11. Abduction of women and girls.
12. Endeavouring to conceal the birth of a child.
13. Offences against any provision of the laws relating to bankrupts and insolvents.
14. Composing, printing, or publishing blasphemous, seditious, or defamatory libels.
15. Bribery.
16. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence, which such justices or recorder respectively have or has jurisdiction to try, when committed by one person.
17. Stealing, or fraudulently taking, or injuring, or destroying records, or documents belonging to any court of law or equity, or relating to any proceeding therein.
18. Stealing, or fraudulently destroying, or concealing wills or testamentary papers, or any document or written instrument, being, or containing evidence of, the title to any real estate, or any interest in lands, tenements, or hereditaments.

But nothing in the act contained is to give authority to the justices of the peace for the cities of *London* and *Westminster*, the liberty of the *Tower of London*, the *Borough of Southwark*, and the counties of *Middlesex*, *Essex*, *Kent*, and *Surrey*, to try any person for any offence committed, or alleged to have been committed, within the jurisdiction of the *Central Criminal Court*, which such justices are restrained from trying under the provisions of the 4 & 5 Will. 4, c. 36, s. 17, and which are as follows :—Any capital offence, house-breaking, stealing above the value of 5*l.* in a dwelling-house, horse-stealing, sheep-stealing, cattle-stealing, maliciously wounding cattle, bigamy, forgery, perjury, conspiracy, assault with intent to commit any felony, administering or attempting to administer poison with intent to kill or do some grievous bodily harm, administering drugs or other things, or doing anything with intent to cause or procure abortion, manslaughter, destroying or damaging ships or vessels, the breaking of shops, warehouses, counting-houses, and buildings within the curtilage of dwelling houses, killing sheep with intent to steal the carcasses, the uttering of all forged instruments, and the various offences

enumerated in the act passed in the 11 Geo. 4 & 1 Will. 4, c. 66, for amending the laws relative to forgery, forging the assay marks on gold or silver plate, and all the offences relating to coin enumerated in the 2 Will. 4, c. 34, the abduction of women, bankrupts not surrendering under their commission or concealing their effects, breaking down bridges and banks of rivers, taking rewards for helping to stolen goods, personating any officer, seaman or other person in order to receive any wages, pay, allowance or prize money due or supposed to be due, or any out-pensioner of Greenwich hospital in order to receive any out-pension allowance due or supposed to be due, sending threatening letters and using threats to extort money, larceny on navigable rivers and canals, stealing and destroying goods in progress of manufacture, larcenies after a previous conviction, embezzlement, larceny by clerks and servants, and receivers of stolen goods, whether such persons shall be charged as principal offenders, or as accessaries before or after the fact.

1. *Of the Special Sessions.*

How convened.—*Special Sessions* are directed to be holden for certain purposes, at stated periods, by various acts of parliament, as the 9 Geo. 4, c. 61, for licensing alehouses, the 5 & 6 Will. 4, c. 50, for appointing or dismissing surveyors of the highways, and many others. These sessions, therefore, must be held at the particular times named, and according to the directions contained in the several acts. There are other special sessions required to be held for particular purposes, but at no particular times, as for directing or stopping up highways, &c.; and these must be convened whenever the occasion shall arise. Where no specific directions are given by statute for convening a special sessions, the justices of the division may be summoned at the instance of the *custos rotulorum* of the county, the clerk of the peace or his deputy, or two justices. For this purpose, a precept is issued by the party convening the sessions to the chief constable of the district, who thereupon issues precepts to the petty constables, and gives notice to all the justices of the division; which precepts and notice should express distinctly the purpose for which the sessions are convened, and the place of holding them; this last being in the discretion of those who convene the sessions, provided it is within their jurisdiction. Where the division in which the magistrates act is a hundred, the notices must be given by the high constable of the hundred, and not by the clerk to the magis-

trates (*l*); and where they are justices of a corporation, the notices must be given by the officer of the corporation analogous to a high constable in a hundred (*m*). But, although the high constable is required to give the notice, it is not necessary that it should be actually *served* by him; it is sufficient if it be *signed* by him, and served by his authority (*n*). The notice must be *reasonable*, in point of time; a notice, therefore, given on the 14th September for a special sessions to be holden on the 15th, was adjudged to be unreasonable, and the special sessions to be illegally convened (*o*). A special sessions cannot be holden by different sets of magistrates, on different days, for the same purpose. Therefore, if one set of justices legally convene a special session for granting alehouse licences, another set cannot hold a meeting for the same purpose on a subsequent day, although they may all meet together on the day first appointed (*p*). Before the commencement of the business for which the special sessions is summoned, it is advisable that the magistrates' clerk should swear the constables, and take a minute of their evidence as to the service of the notices, in order to ascertain whether the Court has been legally summoned; otherwise the subsequent proceedings may be rendered void. Where the justices are equally divided in opinion, and the chairman has already voted on one side, he has no casting vote (*q*).

How Divisions may be constituted or altered for holding Special Sessions.—By the 9 Geo. 4, c. 43, for better regulating and defining the divisions in counties of justices of the peace, for which special sessions should be held, it is enacted by *sect. 1*, that any two justices of any county may transmit to the clerk of the peace a statement in writing signed by them, of the parishes and places which in their opinion would form together a convenient and proper division for which special sessions should be held, or of any parishes or places which ought to be annexed to any other division. This statement must set forth within what existing division the several parishes and places are situated and deemed to be, and also what existing divisions will be altered by such proposed new division, or by the change of any place from one division to another, and also the names of such justices as are usually resident or acting as such within the

(*l*) *R. v. Surrey Justices*, 5 B. & C. 241.

(*m*) *Ibid.*

(*n*) *R. v. Suffolk Justices*, 6 B. & C. 110.

(*o*) *R. v. Worcestershire Justices*, 2 B. & Ald. 228.

(*p*) *R. v. Sainsbury*, 4 T. R. 451.

(*q*) *Reg. v. Fladbury*, 10 Ad. & E. 706.

boundaries of the proposed new division. The statement (by *sect. 2*) must then be laid before the justices at the next quarter sessions, who are to proceed at the next following quarter sessions to the consideration of it, and at their discretion to adopt the same wholly or in part, or reject it altogether, or adjourn their determination to the next succeeding quarter sessions. The clerk of the peace is (by *sect. 3*) required to publish a copy of the statement in three successive numbers of one or more weekly newspapers usually circulated within the county, and in which the advertisements of county business are usually inserted; and at the foot of such copy, to give notice that such statement has been laid before the quarter sessions, and that the same will be taken into consideration at the then next ensuing quarter sessions.

Requisite order for that purpose.—By *sect. 4*, if the quarter sessions adopt wholly, or in part, such statement, and determine to change any parish or place from one division to another, or to constitute any new division, they are to make an order (*r*) for such alteration, or for defining such new division, in which they must particularly enumerate the parishes and places to be comprised in such new division, and specify the division within which any parishes and places disannexed by such order from any former division, and not forming part of such new division, shall thenceforward be taken to be, and also affix to such new division the name of some principal and convenient parish or place within the same, and must also particularly set down the day from which such order shall take effect. The clerk of the peace is to publish a copy of such order in manner above-mentioned, and to transmit a copy of it to every high constable within the limits of the new or altered division.

Requisite number of Justices.—By *sect. 5*, no new division can be so constituted, unless upon due proof in open court upon oath, that for two years previously (*s*) there have been, and are then, at the least, five justices residing in, or usually acting within the boundary line proposed to be the limits of such new division.

For what period the Division shall remain unaltered.—By *sect. 6*, after the day specified in such order, for the term of twenty-one years (*t*), and until further order of sessions, and subject to no alteration during such term, all business, usually transacted within the

(*r*) There is no appeal against this order; (*s*) But see 6 Will. 4, c. 12, s. 2, *post*, p. 1131. *R. v. Derbyshire Justices*, 1 D. P. C. 386. (*t*) *Ibid.* s. 1.

division within which the same shall have arisen, shall be transacted within the boundaries of such new or altered division, which shall thenceforward be taken to be for all purposes a lawful division for the holding of special sessions; and all constables, officers, and other persons are required to give their attendance upon the justices assembled there.

The Quarter Sessions may new model all the existing Divisions.]
—By *sect. 7*, at the quarter sessions next after the laying of any such statement before the justices there, the sessions are authorized, if they deem it expedient, not to proceed to the single consideration of such statement, but, instead thereof, to cause an inquiry to be made into the boundary lines, extent, and other local circumstances of all the existing accustomed divisions for the holding of special sessions, and at such or any succeeding quarter sessions, by order of sessions to regulate, alter, new model, and subdivide all or any of such divisions, particularly specifying in such order the names of all such divisions, whether newly constituted, altered, or unaltered, the several parishes and places to be comprised in each, and affixing or continuing to each the name of some principal and convenient parish or place within the same. This order must (by *sect. 8*) be published by the clerk of the peace in the manner above-mentioned, and he must also transmit a copy by the post to the churchwardens and overseers of each parish within the county, to be by them affixed on the principal door of the parish church, and at the foot of every such copy so published or transmitted, he must add a notice, specifying at what time such order will be enrolled, and at what time any party aggrieved may petition against the same. By *sect. 9*, in every such order, some time, not earlier than the fourth quarter sessions next after the making thereof, must be provisionally specified, on which the same shall be enrolled; and at any quarter sessions preceding such time any party may present a petition in writing against such order (*t*), and produce witnesses in support of such petition, and the sessions may hear and determine in a summary way the merits of such petition, and amend the order, if they think proper. But no such petition shall be received, unless after due proof that notice in writing, specifying the grounds thereof, which upon the hearing shall alone be inquired into, hath been served ten clear days before the commencement of such sessions, upon one of the over-

(*t*) This reservation of appeal only applies to the order made under section 7, *R. v. Derbyshire Justices*, 1 D. P. C. 386.

seers, or the tithingman or constable, or two substantial housekeepers of the parish or place wherein the petitioner shall be resident, and also lodged twenty clear days before such commencement at the office of the clerk of the peace, who must transmit a copy to each of the justices usually acting within the district or place named in such notice.

Inrolment of the Order for that purpose, and its duration.—By *sect. 10*, so soon as all such petitions against such order shall have been determined, the quarter sessions may cause to be inserted therein some day, not earlier than one month after such sessions, from which the same shall take effect, and shall cause the same to be inrolled; and the same shall remain an order of sessions controlling any orders previously made for the separate constitution of any new divisions, or the partial alteration of any accustomed divisions, under the former provisions of the act, and not subject itself to revocation or alteration of any kind for the space of ten years (*u*). By *sect. 11*, the clerk of the peace must, immediately after the inrolment of such order, publish a copy of it in manner above mentioned, and also transmit a copy to each justice for the county.

By *sect. 12*, no order or proceeding is to be quashed for want of form, or removed by *certiorari*; and by *sect. 13*, the act is not to extend to the county of Middlesex.

Period for altering the Divisions shortened.—By 6 Will. 4, c. 12, s. 1, the quarter sessions are empowered to alter and revise the divisions mentioned in the preceding act, in the manner and according to the forms required by such act, on the expiration of *three years* from the constituting thereof.

New provision as to requisite Number of Justices.—And by *sect. 2*, the quarter sessions may also make any order for a new division, upon due proof, in open Court, on oath, that *at the time of making the same*, there are, at the least, five justices residing, or usually acting, within the boundary line proposed to be the limit of the new division.

2. *Of the Petty Sessions.*

The *Petty Session*, as we have already observed, is merely a meeting of *two* justices acting within the same division, for the purpose of transacting business, which it is necessary or expedient

(*u*) But see 6 Will. 4, c. 12, s. 1, *suprà*.

should be transacted by *two* justices; and this meeting may be held according to their own arrangement. It is convenient, however, that certain periodical days should be fixed for it, and that it should be holden at the most important or central town of the division. There are many cases, in which, notwithstanding jurisdiction is given to *one* justice alone, it may be advisable for a county magistrate to have the assistance of a colleague. Where statutes are difficult of interpretation,—where a heavy penalty or punishment is imposed for an offence, and the decision of the magistrate is final,—or where any local circumstances occur, which may be supposed to give a bias in the matter either one way or the other;—it will be then the more prudent course, that another magistrate should render his assistance, in order that justice may be administered above all suspicion. And it is not immaterial to observe, that many of the recent statutes give an appeal from the judgment of *one* justice, but declare that the judgment of *two* shall be final and conclusive. In all cases where magistrates exercise a judicial authority, the Court must be open to the public, as far as reasonable accommodation will afford (*x*); and now by 6 & 7 Will. 4, c. 114, s. 2, in all cases of summary conviction the party accused may be defended by counsel or attorney.

Sheep.

FOR *stealing* them, and *cruelty* to them, see *ante*, Cattle.

Penalty for turning out scabbed Sheep on Commons, &c.]—By 38 Geo. 3, c. 65, s. 1, if any person shall turn out, keep, or depasture in or upon any forest, chase, wood, moor, march, heath, common, waste land, open field, or other undivided or uninclosed land, any sheep or lambs infected with the complaint or disorder called scab or mange, or shall wilfully and knowingly turn out, &c. in or upon any such forest, &c. any sheep or lambs, which, at any time within the space of six calendar months immediately previous thereto, shall have been so infected; the offender, being convicted on the oath of one witness before one justice, is liable to a penalty not exceeding 10*l.*, nor less than 20*s.*, together with reasonable costs, to be ascertained by the justices.

Penalty for not marking Sheep.]—By *sect. 2*, the owner of every sheep and lamb of the age of three months, which shall be turned

(*x*) *Daubeny v. Cooper*, 10 B. & C. 237. And see *ante*, *Justices*.

out as above mentioned, must cause them to be marked with the initial letters of his christian and surname, or with such marks with which they have for three preceding years been usually marked, the letters or marks not being less in length than three inches; under the penalty of 2s. for every sheep or lamb.

Suspected Sheep to be examined.—By sect. 3, any person having sheep or lambs actually depasturing or entitled to be depastured on such forest, &c., who shall perceive, or have reasonable ground for believing, that there is any sheep or lamb thereon, contrary to the directions of the act, may apply to one justice of the district, who, on complaint on oath made to him, may issue a warrant under his hand and seal, directed to the keeper of the forest, or his deputy, or to the petty constable, bailiff, headborough, or tithingman of any parish, within or near which any such forest, &c. shall lie and be situate, or unto any other person, commanding him or them to take such sheep or lambs to the next pound, or some other convenient place, to be examined by the person who shall have made the application to the justice, or his servant or agent, and by the person to whom the warrant shall be directed, notice being given at least six hours before the examination by the complaining party to the owner of the sheep, or his head bailiff, or servant, or left at his last or usual place of abode, if any or either of them be known, and reside in the parish, describing the pound or place to which the sheep have been driven. If, after such examinations, it shall be proved to the satisfaction of the justice, that such sheep or lambs have not been depastured contrary to the directions of the act, they shall be driven back to the place from whence they were taken previous to such examination, and the justice shall award such costs to the owner, as to him shall seem reasonable, to be paid by the party making such complaint, and to be recovered in the same manner as any penalty under the act.

Infected Sheep how to be dealt with.—By sect. 4, if upon such examination it shall appear to the justice, that any sheep or lambs have been kept upon such lands or grounds so infected, or which have been so within six calendar months, the justice may direct them to be impounded and forthwith marked on both sides with the letter S. (not being less than five inches in length) and the left ear of the animal to be cut or slit in a horizontal line not exceeding the length of one inch, and, when so marked, they may be delivered on demand to the owner. The expenses of this process, having been ascertained

by the justice, are to be paid by the owner, together with the penalty for every sheep or lamb, and are recoverable in like manner as any penalty; and any such marks are to be deemed evidence of the fact, that such sheep or lambs have been depastured contrary to the directions of the act.

Penalty for destroying Marks.—By sect. 5, if any person, within six calendar months after any sheep shall have been so marked, shall cut out, alter, or destroy the mark in the ear, or if the owner shall not immediately renew the mark in the side, when it shall be defaced, altered, or obliterated, the offender is liable to a penalty not exceeding 20s., nor less than 2s.; and the justice is required to cause the mark to be renewed.

Where marked Sheep not demanded.—By sect. 6, if such sheep or lambs so detained or impounded shall not be demanded and taken away by the owner within five days after they are marked, a justice may by warrant under his hand and seal direct them to be sold, and the money arising by such sale, after deducting costs and expenses, is to be paid to the overseers of the parish or place, where the sheep were detained or impounded; and in case the owner shall not claim the money within twelve calendar months, it is to be applied in aid of the poor-rate.

Recovery and Application of Penalties.—By sect. 7, all penalties may be levied by distress, by warrant under the hand and seal of a justice, upon conviction of the offender upon the oath of one witness, one moiety to be paid to the informer, and the other to the overseers of the parish or township where the offence is committed, in aid of the poor rate.

Form of Conviction, Appeal, &c.—By sect. 8, a general form of conviction is given for any penalty, and also a form of adjudication for marking any sheep. By sect. 9, an appeal is given to the quarter sessions next after the expiration of four calendar months from the time such matter of appeal shall have arisen. And by sects. 10 and 12, no distress or other proceedings are to be deemed unlawful for want of form, or be removable by *certiorari*.

1. *Conviction, under section 1 of the above Act, for turning out scabbed Sheep on a Common.*

Kent, } Be it remembered, that on this — day of — in the year of our
to wit. } Lord 1843, A. B. of, &c., is convicted before me, J. P. esquire, one of
her Majesty's justices of the peace in and for the said county, by virtue of an act of
parliament made in the thirty-eighth year of the reign of King George the Third, inti-

tuled, "An Act for preventing the depasturing of Forests, Commons, and open Fields, with Sheep or Lambs infected with the Scab or Mange in that part of Great Britain, called England," for that the said A. B., on the — day of — instant, did unlawfully turn out, keep, and depasture in and upon a certain common, called — common, at — in the county aforesaid, two sheep infected with the complaint or disorder called scab, contrary to the statute in such case made and provided. And I the said justice do therefore adjudge the said A. B., for his said offence, to pay the sum of 10*l*. Given under my hand and seal this — day of —, A. D. 1843.

2. *Adjudication, under section 4, for marking diseased Sheep.*

Kent, } Upon the report upon the oath of C. D., of, &c., this — day of
to wit. } — in the year of our Lord 1843, made unto me J. P. esquire, one of
her Majesty's justices of the peace in and for the county aforesaid, respecting two
sheep belonging to A. B., of, &c. [or "the owner thereof being unknown,"] which
have been detained and impounded in a certain pound in the parish of — in the
said county, by virtue of a warrant under my hand and seal, I, the said justice, do
hereby adjudge that such sheep appearing to me to be infected with the scab [or
"having within the space of — months, immediately previous to the date hereof,
been infected with the scab,"] be marked forthwith, according to the directions of an
act made in the thirty-eighth year of the reign of King George the Third, intituled
[*here set forth the title of the act*]. Given under my hand and seal this — day of
— in the year of our Lord 1843.

Ships.

FOR setting fire to ships, see **Arson**.

For regulations as to ships in ports, harbours, and navigable rivers, see **Rivers and Navigation, Thames**.

For regulations as to dealers in marine stores, and for receiving ships' stores in the river Thames, see **Marine Stores, Thames**.

For regulations as to the performance of quarantine, see **Quarantine**.

For riotously preventing the loading of ships, and hindering seamen from working, see **Seamen**.

For the duties of masters of ships, with regard to apprentices, see **Apprentices**.

For the offence of fitting out armed vessels in the service of foreign states, see **Foreign Enlistment**.

For offences relating to pilotage, see **Pilots**.

And see also **Piracy, Smuggling**.

1. *Stealing from Ships.*

2. *Offences connected with the Wreck, or destruction of Ships.*

3. *Regulations as to Salvage.*

4. *Detaining the Certificate of a Ship's Registry.*

5. *Regulations as to Passenger Vessels.*

6. *Regulations as to Vessels laden with Timber from North America.*

1. *Stealing from Ships, &c.*

By 7 & 8 Geo. 4, c. 29, s. 17, if any person shall steal any goods or merchandize in any vessel, barge, or boat of any description whatsoever, in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to or communicating with any such port, river, or canal, or shall steal any goods or merchandize from any dock, wharf, or quay adjacent to any such port, river, canal, or creek; the punishment is, by 7 Will. 4 & 1 Vict. c. 90, s. 2, *Transportation not exceeding fifteen years, nor less than ten years, or Imprisonment not exceeding three years, with or without hard labour and solitary confinement, by sect. 3.*

2. *Offences connected with the Wreck, or destruction of Ships.*

False Lights.—By 7 Will. 4 & 1 Vict. c. 89, s. 5, whosoever shall unlawfully exhibit any false light, or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing tending to the immediate loss or destruction of any ship or vessel in distress; *Felony, Death.*

Impeding Shipwrecked Persons.—By sect. 7, whosoever shall, by force, prevent or impede any person endeavouring to save his life from any ship or vessel, which shall be in distress, or wrecked, stranded, or cast on shore (whether he shall be on board, or shall have quitted the same); *Felony, Transportation for life, or not less than fifteen years, or Imprisonment not exceeding three years, with or without hard labour and solitary confinement, by sect. 12.*

Destroying any part of the Wreck, &c.—By sect. 8, whosoever shall unlawfully and maliciously destroy any part of any ship or vessel, which shall be in distress, wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel; *Felony, Transportation not exceeding fifteen years, nor less than ten years, or Imprisonment as last above mentioned.*

Destroying Buoys, &c.—By 1 & 2 Geo. 4, c. 75, s. 11, if any person shall wilfully cut away, cast adrift, remove, alter, deface, sink, or destroy, or shall do or commit any act with such intent and design, or in any other way injure or conceal, any buoy, buoy-rope, or mark belonging to any ship or vessel, or which may be attached to any anchor or cable belonging to any ship or vessel, whether in

distress or otherwise; the offender is declared to be guilty of *Felony*, punishable with *Transportation for seven years, or Imprisonment at the discretion of the Court.*

By 1 & 2 Geo. 4, c. 76, s. 6, a similar provision is made as to the same offence committed within the jurisdiction of the *Cinque Ports*. And by 48 Geo. 3, c. 130, s. 12, any pilot, boatman, or other person, within that jurisdiction, who shall counsel, instruct, direct, advise, or procure any master or other person on board of any vessel to cut such vessel's cable, or buoy-rope, or do any other act tending to her destruction, is also declared to be guilty of *Felony, punishable with Transportation not exceeding fourteen years.*

Assaulting persons rendering assistance to Vessels in Distress.]—By 9 Geo. 4, c. 31, s. 24, if any person shall assault and strike, or wound any magistrate, officer, or other person whatsoever lawfully authorized, on account of the exercise of his duty, in the preservation of any vessel in distress, or of any vessel, goods, or effects wrecked or stranded, or cast on shore; he is liable to be *transported for seven years, or Imprisonment at the discretion of the Court, with or without hard labour.*

Molesting persons in saving Wreck, &c.]—By 12 Ann. st. 2, c. 18, s. 3, if any person shall unlawfully enter, or endeavour to enter, on board of any ship in distress, without leave of the commander, or other officer lawfully employed; or if any person shall molest another in the saving of the ship or goods, or shall endeavour to hinder the saving thereof; or where any goods are saved, if any one shall take out or deface the marks of any such goods; the offender shall within twenty days make double satisfaction to the party grieved, at the discretion of two neighbouring justices; or, in default, shall be sent by them to the next house of correction, and be kept to hard labour for twelve months.

Stealing from, when wrecked, or in distress.]—By 7 Will. 4 & 1 Vict. c. 87, ss. 8 and 10, whosoever shall plunder or steal any part of any ship or vessel, which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind, belonging to such ship or vessel (x);—*Transportation not exceeding fifteen years, nor less than ten years, or Imprisonment not exceeding three years, with or without hard labour and solitary confinement,*

(x) It is rather singular, that the statute should omit to declare this offence to be a *Felony*.

the latter being limited to one month at any one time, and to three months in any one year.

Having in Possession stolen Property.—By 7 & 8 Geo. 4, c. 29, s. 19, if any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, shall by virtue of a search warrant (to be granted as therein mentioned) be found in the possession of any person, or on the premises of any person with his knowledge, and such person, on being carried before a justice, shall not satisfy him that he came lawfully by the same, they shall be forthwith delivered to the rightful owner, and the offender, on conviction before the justice, shall forfeit, over and above the value of the goods, not exceeding 20*l*.

Exposing for Sale.—By sect. 20, if any person shall offer, or expose for sale, any goods or articles whatsoever, which shall have been unlawfully taken from any ship or vessel in distress, or wrecked, stranded, or cast on shore, any person to whom the same are offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to a justice. And if the person, who shall have offered or exposed the same for sale, on being duly summoned by the justice, shall not appear and satisfy the justice that he came lawfully by such goods, they shall be forthwith delivered over to the rightful owner, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender, on conviction, shall forfeit, over and above the value of the goods, not exceeding 20*l*.

For the application and recovery of the penalties, and for the proceedings, on summary conviction, see *ante*, title *Beer*.

3. *Regulations as to Salvage.*

Concealing articles belonging to Ships, taken up in Harbours, &c.]—By 1 & 2 Geo. 4, c. 75, s. 1, all pilots, boatmen, hovellers, or other persons, who shall take up any anchors, cables, tackle, apparel, furniture, stores, or materials, or any goods or merchandize which may have been parted with, cut from, or left by, any ship or vessel within any harbours, rivers, or bays, or on any of the coasts of this kingdom, whether the vessel shall have been in distress, or otherwise, and which shall have been weighed, swept for, or taken possession of, by any such person, must send a report in writing of the articles so found, and stating the marks, if any thereon, and also

an accurate and particular description of the bearings, distances, and situations, and time when and where the same were so found, to a deputy vice-admiral, or his agent, at or near to the port or place where such person shall first arrive with such articles, within forty-eight hours after his arrival, or before he or they shall leave the port, if he or they shall quit it before that time shall expire; and must also, within such period, deliver the articles so found into a proper warehouse, or such other place as the vice-admiral of each county shall appoint for safe custody, until the same shall be claimed by the owners, or their agents, and the salvage, together with other lawful charges and expenses paid by them, or security given for the payment thereof, to the satisfaction of the salvor. Every such pilot, boatman, &c., who shall wilfully and fraudulently keep possession of, or retain, or conceal, or secrete any such anchors or cables, tackle, &c., or deface, take out, or obliterate the marks and numbers thereon, or alter the same in any manner, with intent thereby directly or indirectly to prevent the discovery and identification of such articles, and shall not report and deliver the same at some proper warehouse, or other place in the manner aforesaid, and within the time before limited, shall forfeit all claim to salvage, and shall, on conviction, be adjudged and deemed *guilty of receiving goods, knowing them to have been stolen, and shall suffer the like punishment as if the same had been stolen on shore.*

Deputy Vice-Admiral not reporting articles.]—By sect. 3, any deputy vice-admiral, or his agent, may seize and detain any such articles, as shall not have been reported in the manner directed by the act; and upon such seizure, he must deposit the same in the proper warehouse or place, and within two days thereafter send a report in writing of the articles as seized, and stating the marks (if any) thereon, to the Trinity House; under the penalty of 20*l.*, on conviction before *one justice*, upon the oath of *one credible witness*, together with double the value of the goods so seized; one half of which penalty is to be paid to the informer, and the other half to the poor of the parish.

When Justices may determine the amount of Salvage.]—By sect. 7, if the salvors of any such articles, or goods, and the owners thereof, cannot agree respecting the amount of salvage, then the matter in difference shall be determined by any three justices of the peace, residing near to the place where such articles or goods shall be deposited, who shall proceed in their inquiry, within forty-eight

hours after such difference shall be referred to them; and if they cannot agree, they may nominate any third person conversant in maritime affairs, who shall ascertain the amount of the salvage, within forty-eight hours after he shall have been so nominated; and the justices, and such third person, shall have full power to examine the parties, or their witnesses, upon oath. And by *sect. 10*, the person so named by the justices may demand from the owner *2l. 2s.*

Justices may determine amount of Remuneration for services to Vessels in Distress.—By *sect. 8*, the justices may decide, in like manner, on all claims and demands whatsoever, which shall be made by pilots, boatmen, and other persons, for service of any description (except pilotage) to be rendered by them to any ship or vessel, for carrying off from the shore to such vessel any anchors, cables, or other stores, or for the saving and preserving any goods or merchandize which may have been wrecked, stranded, or cast away from the vessel, or for being instrumental in saving the life of any person on board; the master, or owners, of such vessel, or his or their agent, being present with such justices. The decision of the justices is final, except where an appeal shall be interposed by either party to the Court of Admiralty, within thirty days after the award of the justices or such person so appointed as aforesaid.

Appeal, &c.—By *sect. 9*, where persons entitled to salvage are dissatisfied with such awards, they may appeal to the Court of Admiralty; but the goods are to be restored to the owners, on giving bail in the amount awarded for salvage. The bail is to be taken by a commissioner in prize cases, if there is one in the place; otherwise by a justice, who must certify the amount of the bail, and the value of the articles saved, with the proceedings to the Court of Admiralty.

Fraudulent Purchasers of Anchors, &c.—By *sect. 12*, if any person shall knowingly and wilfully, and with intent to defraud and injure the true owner, or any person interested therein, purchase or receive any anchors, cables, or goods or merchandize, which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress, or otherwise, or whether the same shall have been preserved from any wreck,—if the directions with regard to such articles shall not have been previously complied with,—such person shall be deemed guilty of receiving stolen goods, knowing them to be stolen, as if the same had been stolen on shore, and suffer the like punishment as for a misdemeanor at the common law, or be transported for seven years, at the discretion of the Court.

Disposing of Anchors, &c. abroad.—By *sect. 15*, every pilot, hoveller, boatman, or master of any vessel, who shall convey any anchor or cable which may have been weighed, swept for, or taken possession of by them, or which they may have purchased, knowing them to have been weighed, &c. without being reported, to any foreign port, harbour, creek, or bay, and there sell and dispose of the same, is guilty of *Felony*, and liable to transportation for seven years.

Recovery of Penalties, &c.—By *sect. 17*, all penalties may be levied by distress; in default of which the offender may be committed, in case of any first offence, for six calendar months, and in case of any further offence, for twelve calendar months.

By *sect. 19*, a general form of conviction is given.

By *sect. 20*, an appeal is given to the quarter sessions, within three calendar months after the conviction, upon giving ten days' notice to the party appealed against. No proceedings to be quashed for want of form, and no *certiorari*.

By *sect. 21*, inhabitants of parishes are competent witnesses.

Goods of a perishable nature may be sold.—By *sect. 27*, when any goods, which shall be found or taken possession of, shall be of so perishable a nature, or so much injured or damaged, that the same cannot be kept, then, at the request of any of the persons interested therein, and with the consent and approbation of some justice not interested or concerned in the same, and in his presence, or in that of some person specially appointed by him, such goods may be sold by public auction or private contract, as the justice may direct in writing under his hand; which writing shall contain an accurate and particular account of the goods, and of the marks that may be thereon, or other particulars belonging thereto, and of the times and places of the finding and intended sale. The money raised by such sale, after defraying the reasonable expenses to be settled and allowed by such justice, must be deposited in the hands of the lord or lady of the manor, or other person, or deputy vice-admiral, who would have received the custody of the goods so sold, and be subject to the claims of all persons, in like manner as the goods themselves would have been subject to.

Entry on private Lands.—By *sect. 29*, the deputy vice-admiral of the part of the coast where any ship or vessel shall be stranded or wrecked, or where any wreck of the sea or goods shall be cast on shore, and his agent, and also the owner or master of any such ship or vessel, and the owners of any such goods, and any officer of the

Customs or Excise, or other officer, and all persons whatsoever aiding or assisting them in saving or recovering any such vessel, or the cargo, stores, tackle, or other articles belonging to the same, or in preserving the lives of the crew or persons belonging thereto, or of any wreck as aforesaid, may pass and repass with their horses, carts, carriages, or servants, over any lands near to the part of the sea coast where such vessel shall be so wrecked or stranded, or on which such wreck shall be cast, without interruption or obstruction by the owner or occupier thereof, for the purpose of rendering assistance in saving, recovering, and preserving any such vessel, or goods, or stores, or any cables, anchors, spars, masts, cordage, or other tackle or articles, belonging to any vessel, or for saving or otherwise assisting in preserving the lives of the crew, or of any persons on board, or for the taking possession of and securing for the benefit of the owners any wreck or goods, or any other things cast or found on shore, or near thereto; provided there shall be no road, by which the parties may pass and repass with as much convenience and expedition as over such lands; and they may also place any planks, timber, or any part of the wreck, or any goods or stores removed or saved from any such vessel, or any such other wreck or goods, upon any such land, for a reasonable time, until they can be removed to some warehouse or safe place of deposit; making compensation to the occupier of such lands for any damage done; which compensation shall be a charge upon the wreck or goods, in like manner as salvage; and in case the parties cannot agree as to the amount, then the same shall be ascertained and settled by two justices of the peace, or by a third person named by them, in the same manner as the amount of salvage is directed to be ascertained by the 49 Geo. 3, c. 122, s. 8 (y).

Embezzling Anchors, &c. within the Cinque Ports.—By 1 & 2 Geo. 4, c. 76, s. 7, all anchors, cables, or other ship's stores or materials, or any goods or merchandize, which may have been parted with, cut from, or left by any ship or vessel in the Downs, or elsewhere within the jurisdiction of the Cinque Ports, whether the same shall be in distress, or otherwise, and which shall have been weighed, swept for, or taken possession of by any person, shall be by them

(y) The 49 Geo. 3, c. 122, s. 8, contains the same regulations for ascertaining the amount of salvage, as the 7th section of the above act of 1 & 2 Geo. 4, c. 75, except that by the former act two justices may act, instead of three, as required by

the latter act. There seems to have been no use in referring to the 49 Geo. 3, c. 122, when the 7th section of the above act contained sufficient provisions to effect the object.

delivered either at *Ramsgate, Deal, or Dover, Harwich, Bright-lersea, or Wivenhoe*, or such other places as shall be declared by the lord warden, in the same state in which they are found, to the serjeant of the admiralty of the Cinque Ports, or such other person as he shall authorize to receive the same. If not so delivered, and any of such articles shall afterwards be discovered in the possession, custody, or power of such person, he shall be adjudged and deemed guilty of receiving goods, knowing them to have been stolen.

Unlawfully disposing of Marine Stores, &c. from Wrecks.—By sect. 8, all merchandize, materials, or marine stores, whether belonging to his Majesty, or to any British subjects, or foreigners, which may be preserved from any vessel stranded, deserted by the crew, or wrecked, either on shore, or on the *Goodwin*, or on any other sand or shoal, or any part of the mainland, or any port or place within the jurisdiction aforesaid, shall be landed and delivered at one of the six places of deposit belonging to the lord warden's deputies there, or such other place as shall be declared by the lord warden for that purpose. If any person, who shall have preserved or taken possession of any such merchandize or marine stores within the jurisdiction aforesaid, shall sell, dispose of, or otherwise make away with the same, or shall in any manner conceal, deface, take out, or obliterate the marks or number thereon, or alter the same in any manner, with intent thereby directly or indirectly to prevent the discovery and identity of such articles by the owner;—*Felony*.

Receivers of such Stores.—By sect. 10, if any person within the jurisdiction aforesaid shall, knowingly, and with intent to defraud and injure the true owner, purchase or receive any anchors, or other ship's stores, or materials of any description whatever, or any merchandize, which may have been taken up, weighed, swept for, or taken possession of, whether the same shall have belonged to any ship or vessel in distress, or otherwise, or whether the same shall have been preserved from any wreck within the jurisdiction aforesaid; such person shall, on conviction, *be deemed guilty of receiving stolen goods, knowing them to be stolen, and shall suffer the like punishment as for a misdemeanor at the common law*, and be also liable to be *transported for seven years*, in the discretion of the Court.

4. *Detaining Ship's Register.*

By 3 & 4 Will. 4, c. 55, s. 27, if any person, who shall have received or obtained by any means, or for any purpose whatever, the

certificate of the registry of any ship or vessel (whether such person shall claim to be the master, or the owner, or one of the owners of the vessel), shall wilfully detain and refuse to deliver up the same to the proper officers of the Customs, for the purposes of such ship or vessel, as occasion shall require, or to the person having the actual command, possession and management of the vessel, as the ostensible and reputed master, or as the ostensible and reputed owner, such last-mentioned person may make complaint on oath of such detainer and refusal to any justice residing near to the place of such detainer and refusal, who is required, by warrant under his hand and seal, to cause the person complained against to be brought before him. And if it shall appear to the justice, that the certificate of registry is not lost or mislaid, but is wilfully detained by such person, he shall be thereof convicted, and shall forfeit and pay 100*l.*; and on failure of payment, be committed to the common gaol for not less than three months, nor more than twelve. The justice is required to certify the detainer, refusal, and conviction to the person who granted such certificate of registry, for the purpose of the vessel being registered *de novo*.

By *sect. 46*, the penalty is to be disposed of in such manner as a penalty for any offence against any law relating to the Customs.

Where the certificate of a ship's registry has been deposited with a party as a security for advances for the use of the ship, it may be a question, whether, upon the true construction of this statute, he could be said *wilfully* to detain the certificate, if he did so by reason of a lien upon it (*z*). If the party claiming the delivery up of the certificate is the person having the *actual command, possession and management* of the vessel, as the ostensible and reputed master, or as the ostensible and reputed owner, then the conviction may be for detaining it from such master or owner. But, where the claimant does not come strictly within this description, the conviction can only be for not delivering up the certificate *to the proper officers* of the Customs, stating the specific purpose for which the delivery is required. A conviction, therefore, would be bad, for not delivering up the certificate *to the owner*, although it was demanded for the purpose of having the necessary indorsement made on it at the Custom house (*a*). And the conviction must not only allege the purpose for which the certificate is required, but it must specify the officers, in such a manner that the Court above may know that they are those

(*z*) *Bowen v. Fox*, 10 B. & C. 41.

(*a*) *R. v. Pixley*, 13 East, 91.

whom the act calls the *proper officers* (b), that is (by *sect. 3*), the collector and comptroller of the Customs.

1. *Conviction of the Master of a Ship, under the above Statute, for detaining a Certificate required to be delivered up for the purpose of having a proper Indorsement made upon it at the Custom House.*

Middlesex, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, at —, in the said county, A. B. of —, in the said
county, personally came before me J. P. esquire, one of her Majesty's justices of the
peace in and for the said county, and residing near to the place where the offence
hereinafter mentioned was committed, and complained to me, upon oath, that he the
said A. B. was and still is the sole owner of a certain ship or vessel called the Bri-
tannia, then and now lying and being in the port of London, and that C. D. of Lime-
house, in the said county, late master of the said ship, who had theretofore received
and obtained the certificate of the registry of the said ship, then and there had the
said certificate in his custody and possession: And that the said C. D., so having the
said certificate in his custody and possession, was then and there requested by the said
A. B. to deliver up the said certificate of registry to the proper officers of her Majesty's
Customs, that is to say, to the collector and comptroller of her Majesty's Customs at the
port of London, that being the port where the said ship is registered, for the purpose of
having the proper indorsement made by the said collector and comptroller on the said
certificate, of the transfer by way of mortgage of the said ship from the said A. B.
to one E. F., according to the form of the statute in such case made and provided;
but the said C. D. then and there wilfully and wrongfully detained the said certificate,
and refused to deliver up the same to the said collector and comptroller, for the pur-
pose aforesaid, contrary to the statute in such case made and provided: Whereupon
the said C. D. being now brought before me, the said justice, by virtue of a warrant
under my hand and seal duly issued in that behalf, the said A. B. now here, in the
presence and hearing of the said C. D. on his oath deposes to the truth of the said
information and complaint against the said C. D.: and the said C. D., having heard
the charge against him contained in the said information and complaint, and being
examined by me touching the said detainer and refusal, and being asked by me what
he has to say in answer to the said complaint, he the said C. D. declared to me the said
justice, that he would not deliver up the said certificate for the purpose aforesaid, and
that he had a right to keep the same in his own possession: Therefore, it manifestly
appearing to me, the said justice, on the examination of the said C. D., that the said
certificate of registry is not lost or mislaid, but is wilfully detained by the said C. D.,
I do hereby convict him of the offence aforesaid, and do declare and adjudge that the
said C. D. hath forfeited for his said offence the sum of £100, to be paid and disposed
according to the form of the statute in such case made and provided; and that on
failure of immediate payment thereof, he the said C. D. shall be committed to the
common gaol at —, in the said county, there to remain without bail or mainprize
for the space of twelve months. Given under my hand and seal, this — day of
—, in the year of our Lord 1843.

J. P. (L. S.)

2. *Conviction of the Master of a Ship, under the above Statute, for detaining the Certificate from the ostensible Owner, having the actual command, possession and management of the Vessel.*

Middlesex, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, at —, in the county aforesaid, A. B. of, &c. personally
came before me J. P. esquire, one of her Majesty's justices of the peace in and for
the said county, and residing near to the place where the offence hereafter mentioned
was committed, and complained to me upon oath, that he the said A. B. on the —
day of — instant, was and still is the sole owner of a certain ship or vessel called
the *Britannia*, then and now lying in the port of London, and that C. D. of Limehouse,
in the said county, late master of the said ship, who had theretofore received and
obtained the certificate of the registry of the said ship, then and there had the said
certificate in his custody and possession: And the said C. D., so having the said cer-
tificate in his custody and possession, was then and there requested by the said A. B.
to deliver up the same to him the said A. B., as the ostensible and reputed owner of
the said ship, and as the person having the actual command, possession and manage-
ment thereof; but the said C. D. then and there wilfully and wrongfully detained the
said certificate, and refused to deliver up the same to the said A. B., contrary to the
statute in such case made and provided: Whereupon the said C. D. being now brought
before me, the said justice, by virtue of a warrant under my hand and seal duly
issued in that behalf, the said A. B. now here in the presence and hearing of the said
C. D. on his oath deposes to the truth of the said information and complaint against
the said C. D., and the said C. D. having heard the charge against him contained in
the said information and complaint, and being examined by me, the said justice,
touching the said detainer and refusal, and being asked by me what he has to say in
answer to the said complaint, he the said C. D. declared to me, the said justice, that
he would not deliver up the said certificate, and that he had as much right to it as the
said A. B.: Therefore it manifestly appearing to me, the said justice, on the examina-
tion of the said C. D., that the said certificate of registry is not lost or mislaid, but is
wilfully detained by the said C. D., I do hereby convict him of the offence aforesaid,
and do declare and adjudge that the said C. D. hath forfeited for his said offence the
sum of £100, to be paid and disposed of according to the form of the statute in such
case made and provided; and that on failure of immediate payment thereof, he the
said C. D. shall be committed to the common gaol at —, in the said county, there
to remain without bail or mainprize for the space of twelve months. Given under my
hand and seal, this — day of —, in the year of our Lord 1843.

5. *Regulations as to Passenger Vessels.*

1. *Between Great Britain and Ireland.*
2. *Between the United Kingdom and any Port out of Europe.*

1. *Between Great Britain and Ireland.*

Limited number of Passengers.—By 4 Geo. 4, c. 88, s. 1, it is unlawful for the master or commander, or person having the charge or command of any vessel employed in the conveyance of passengers between Great Britain and Ireland, being of any burthen less than

two hundred tons, to have or take on board, or to carry or convey, any greater number of persons than twenty, as passengers, from any port in Great Britain to any port in Ireland, or *vice versa*, without a licence under the hand of the collector, comptroller, or other chief officer of the Customs at the port from which such vessel shall sail.

Proportion of Passengers to Tonnage.—By sect. 2, it is unlawful for the commander of any vessel so licensed, to have on board, after being cleared out from any port, at any one time, a greater number of persons (exclusive of the ordinary crew) than in the proportion of five adult persons, or of ten children under fourteen years of age, or fifteen children under seven years of age, for every four tons of the burthen of the vessel; and if the vessel is partly laden with goods, or horses and carriages, then the proportion is to be five adult persons, or ten children under fourteen, or fifteen children under seven, for every four tons of that part of the vessel which shall remain unladen.

Penalty for taking an improper number.—By 4 Geo. 4, c. 88, s. 3, if any master, having the charge or command of any ship or vessel employed in the conveyance of passengers between Great Britain and Ireland, shall take on board any passengers beyond the number of twenty, or if the owner shall engage to take on board any passengers beyond that number, without such licence as required by that act, he is liable to a penalty of 50*l.* And if the master shall take on board, or the owner engage to take on board, a greater number of persons than in the proportion allowed by the act, he is liable to a penalty of 5*l.* for every person exceeding that proportion. And every ship having on board a greater number than twenty persons, without such licence, may be seized and detained by the collector or other officer of the Customs, until the penalty of 50*l.* shall be paid.

Penalty on certain Vessels unlicensed.—By sect. 4, the master of any trading or coasting vessel, not being wholly employed in the conveyance of passengers, and not licensed pursuant to the act, is prohibited from taking on board a greater number of persons than ten, exclusive of the crew, if the vessel is of the burthen of one hundred tons, or under,—or more than twenty, exclusive of the crew, if the vessel is of a greater burthen, and does not exceed two hundred tons,—under the penalty of 5*l.* for every person beyond that proportion.

Copy of Licence to be hung up in Cabin.—By sect. 5, a printed

copy of an abstract of the act, and a copy of the licence granted to the captain or owners, and a notice or statement of the number of persons allowed to be carried in such vessel, must be hung up in some conspicuous place on the deck and in the cabin; under the penalty of 10*l.* upon the master or commander.

By *sect. 6*, the act is not to extend to vessels in the King's service, or in that of the Post office, Customs, or Excise, or of the East India Company.

Recovery and Application of Penalties, &c.—By *sect. 7*, all penalties are recoverable, within three calendar months after the commencement of the offence, before one justice for the county or place in which the port is situate, from which the vessel shall depart, or at which the vessel shall arrive, and may be levied by distress; in default of which, commitment not exceeding two calendar months; one moiety of the penalty to go to the prosecutor, and the other to the King.

By *sect. 8*, an *appeal* is given to the next quarter sessions, upon giving ten days' notice to the justice, and entering into the usual recognizance.

By *sect. 9*, no proceedings are to be quashed for want of form, nor removed by *certiorari*.

Conviction of the Master of a Vessel licensed for the Carriage of Passengers between Great Britain and Ireland, for carrying more than the allowed proportion of Passengers, under the 4 Geo. 4, c. 88, s. 2.

Lancashire, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, at Liverpool, in the county aforesaid, A. B. of, &c. personally came before me J. P. esquire, one of her Majesty's justices of the peace in and for the said county, and informed me, that C. D. of Liverpool aforesaid, mariner, within the space of three calendar months now last past, to wit, on the — day of —, in the year aforesaid, at Liverpool aforesaid (he the said C. D. being then and there the master of a certain vessel called the Aurora, of the burthen of one hundred and seventy tons, and duly licensed for the conveyance of passengers between Great Britain and Ireland, according to the directions of the statute in that behalf, and the said C. D. then and there having the charge and command of the said vessel), did have on board at one time, after the said vessel had cleared out from a certain port in Great Britain, that is to say, from the port of Liverpool aforesaid, a greater number of persons (exclusive of the ordinary crew of the said vessel) than in the proportion of five adult persons, or of ten children under fourteen years of age, or of fifteen children under seven years of age, for every four tons of the burthen of the said ship, that is to say, the number of two hundred and forty adult persons, and thirty children under fourteen years of age, and twenty children under seven years of age, and did carry and transport the said number of persons from Liverpool aforesaid to the port of Cork

in Ireland, contrary to the form of the statute in such case made and provided : Whereupon the said C. D., after being duly summoned to answer the said charge, appeared before me, the said justice, on this — day of —, in the year aforesaid, at Liverpool aforesaid, and having heard the charge contained in the said information, declared that he was not guilty of the said offence ; whereupon I, the said justice, did then and there proceed to examine into the charge contained in the said information ; and one credible witness, to wit, G. O. of —, in the county aforesaid, upon his oath deposeth and saith, in the presence of the said C. D., that within three calender months now last past, to wit, on the — day of —, in the year aforesaid, at Liverpool aforesaid, the said C. D. &c. [*here state the evidence as nearly as possible in the words used by the witness, and if more than one witness be examined, state the evidence given by each.*] Therefore it manifestly appearing to me, the said justice, that the said C. D. is guilty of the offence charged upon him in the said information, I do hereby convict him of the offence aforesaid, and do declare and adjudge, that he the said C. D. hath forfeited the sum of £ — for the offence aforesaid, being at and after the rate of £ — for each person exceeding in number the proportion limited by the said statute, to be paid and divided according to the directions of the said statute. Given under my hand and seal, this — day of —, in the year of our Lord 1843.

2. *Between the United Kingdom and any port out of Europe.*

Limitation of Passengers.—By 5 & 6 Vict. c. 107, s. 2, no ship carrying passengers on any voyage from any port in the *United Kingdom*, or in the islands of *Jersey, Guernsey, Alderney, Sark, or Man*, to any port out of *Europe*, and not being within the *Mediterranean Sea*, shall proceed on her voyage with or shall carry more persons on board, than in the proportion of three persons to every five tons of the registered burden of such ship, the master and crew being included in such prescribed number ; and no such ship shall, whatever be the tonnage thereof, proceed on her voyage with or carry more passengers on board than in the following proportion to the space appropriated for their use and unoccupied by stores, not being the personal luggage of passengers ; that is to say, on the lower deck or platform, one passenger for every ten clear superficial feet, if such ship is not to pass within the tropics during such voyage ; but if she is, then one passenger for every twelve clear superficial feet, if such voyage is computed not to exceed twelve weeks, and one passenger for every fifteen such clear superficial feet, if such voyage is computed to exceed twelve weeks ; and under the poop and on the orlop deck, if any, one passenger for every thirty such superficial feet in all cases. If any ship shall carry any passengers beyond the above proportions, the master, for every passenger constituting such excess, is liable to a penalty not exceeding 5*l.*

Construction of lower Deck.—By sect. 3, no ship shall carry

passengers, unless she have lower or hold beams forming part of the permanent structure of such vessel, and also a lower deck, of which the under surface shall not be lower than three inches above the bottom of the lower beams, and properly and substantially secured to the same, nor unless such lower deck shall be of not less than one and a half inch in thickness.

Height between Decks.—By *sect. 4*, every such ship must be of the height of six feet, at the least, between the upper deck and the lower deck, and must not carry passengers on the orlop deck, if any, unless the height between that deck and the one immediately above it be six feet at the least.

Sleeping Berths.—By *sect. 5*, no ship shall have more than two tiers of berths, and in no such ship shall the interval between the floor of the berths and the deck beneath them be less than six inches; and the berths shall be securely constructed, and their dimensions shall not be less than after the rate of six feet in length, and eighteen inches in width, for each passenger.

Provisions and Water.—By *sect. 6*, there shall be issued to the passengers daily a supply of water, at the rate of at least three quarts for each passenger per day, and there shall also be issued at convenient times, not less often than twice a week, a supply of provisions after the rate of seven pounds of bread, biscuit, flour, oatmeal, or rice per week, provided that one half at least of the supply shall consist of bread or biscuit, and that potatoes may be employed to the extent of the remaining half of the supply, five pounds however of potatoes being computed as equal to one pound of the other articles; and such issues as aforesaid shall be made throughout the whole voyage, including the time of detention at any port before the end of such voyage. No ship shall be cleared out, until there shall be laden and on board such quantity of pure water, and of good and wholesome provisions of the requisite kind, as shall be sufficient to allow of the issues aforesaid during the period assigned to such voyage.

Regulations as to Water.—By *sect. 7*, the water shall be carried in tanks or sweet casks not exceeding 300 gallons; and when any ship shall be destined to call at a port in the course of her voyage for the purpose of filling up her water, a supply of water at the rate before mentioned for every week of the computed voyage to such port shall be deemed to be a compliance with the provisions of the act, subject to the following conditions:

First, that the government emigration agent, at ports where there is one, and the collector and comptroller of customs at other ports, signify his approval in writing, and that the same be carried amongst the papers of the ship, to be delivered to the collector of the customs, or her Majesty's consul, as the case may be, on reaching her final destination.

Secondly, that an engagement to call at such port be inserted in the bond required to be given to the Crown by the owner or charterer and master.

Thirdly, that if the computed length of voyage to such port be not declared in the act, it shall be competent to the government emigration agent, or the collector or comptroller of the Customs, to fix the same in each case; and,

Fourthly, that the ship shall have on board, at the time of clearing out, tanks, or water casks, sufficient for stowing the quantity of water required for the longest portion of the whole voyage.

How Children computed.—By *sect. 9*, two children, each being under the age of fourteen years, are to be computed as equal to one passenger, and children under the age of one year are not to be included in the computation.

Duty of Emigration Agents, &c.—By *sect. 10*, government emigration agents, or the proper officers of the customs, are required to survey provisions and water; and (by *sect. 11*) to attend generally to enforcing the regulations of the act. And (by *sect. 12*) if there are any doubts whether a ship is seaworthy, they are to cause her to be surveyed by two competent persons, and if reported not seaworthy, she is not to be cleared out.

Sufficient Boats.—By *sect. 13*, every ship must be provided with good sound boats of suitable size, and properly supplied with all requisites for their use, in the following proportion to the registered tonnage of the ship:

Two boats, if the tonnage be 150 tons and under 250 tons:

Three boats, if the tonnage be 250 tons and upwards:

Four boats, if the tonnage be 500 tons and upwards, and the number of passengers exceed 200:

one of such boats to be a long boat, of a size duly proportioned to the tonnage of the ship.

Copies of the Act to be kept on board.—By *sect. 14*, two copies

of the act are to be delivered to the master of every ship, on demand, by the collector or comptroller of the Customs, at the port and time of clearance of the ship; and one of such copies, upon request made to the master of the ship, must be produced to any passenger for his perusal.

Surgeon and Medicines to be carried.—By sect. 15, no ship, except on a voyage to North America, shall, in case the number of passengers amount to 100,—or in case the estimated length of the voyage shall exceed twelve weeks, and the number of passengers shall amount to fifty,—clear out from any port, unless there shall be rated upon the ship's company, and shall be actually serving on board, some person duly authorized by law to practise as a physician, surgeon or apothecary; and no such ship shall put to sea, unless such medical practitioner shall be therein, and shall *bonâ fide* proceed on such voyage, taking with him a medicine chest, and a proper supply of medicines, instruments, and other things suitable to the intended voyage. And no ship shall clear out for any voyage, unless there shall be actually laden on board medicines, and printed or written directions for the use of the same, and other things necessary for the medical treatment of the passengers on board, and available for that purpose, adequate in amount and kind to the probable exigencies of the voyage, together with a certificate under the hand of a medical practitioner, not the seller of the medicines, that the same are qualified to meet any probable exigencies, and that he has no pecuniary interest in the supply of the same.

Sale of Spirits prohibited.—By sect. 16, no spirits or strong waters shall be sold to any passenger during the voyage; and if the master of the ship shall, directly or indirectly, sell, or cause to be sold, any such, he is liable to a penalty not exceeding 100*l.*

List of Passengers.—By sect. 17, the master must, before clearing out for the voyage, sign and deliver, in duplicate, to the collector or such officer of the customs as may clear the ship, a list, made out according to the form contained in the schedule (A), of all the passengers; and the collector or other officer shall thereupon countersign and return to the master one of such duplicate lists, which the master must exhibit, with any additions made thereto as directed, to the collector or other chief officer of the Customs at any port in her Majesty's possessions, or to her Majesty's consul at any foreign port at which any passengers shall be landed, and must deposit the same with such collector or chief officer, or consul, at his final port of discharge.

By *sect. 18*, in case the vessel shall have cleared out with a number of passengers less than she could lawfully carry, or in case any passenger named in the list shall not proceed on the voyage, and there shall afterwards be taken on board any additional passenger, the master must add to the first list the names and particulars of every such additional passenger, and prepare also a separate list of such additional passengers, and deliver the same, together with the first list, both being duly signed by him, to the collector or other officer of Customs at the port where any such additional passenger may have embarked; and thereupon the collector or other officer is to countersign the addition so made to the first list, and return the same to the master, retaining the separate additional list. If there is no collector or other officer of Customs at the port, then such separate list, and also the first list with the additions to it, must, in case the vessel shall subsequently touch at any port at which there shall be stationed any officer of the Customs, be delivered by the master to such officer.

Passengers to North America.—By *sect. 19*, if any owner, charterer, or master of a ship, or any passage-broker, agent, or other person shall receive any money from any person, in respect of his conveyance as a passenger to any port in North America, the person so receiving such money must give a written acknowledgment for the same, in the form contained in the schedule (B.), under a penalty not exceeding 10*l.* for each such passenger; and if he shall be licensed as after-mentioned his licence may be declared to be forfeited.

Licences to be taken out by Brokers, &c.—By *sect. 20*, no person, not being the owner or master of the ship in which such passages as are thereafter mentioned shall be taken, shall carry on the business of a passage-broker, or passage-dealer, in respect of passages from the United Kingdom to any port in North America, or shall sell or let, or agree to sell or let, to any person any such passage, unless he shall have previously taken out a licence to carry on the business of a passage-broker or passage-dealer as after-mentioned, and unless such licence shall continue in force, under a penalty not exceeding 10*l.*, and being subject to such further penalties and liabilities to which licensed passage-brokers and passage-dealers are subject under the act. Every passage-broker, in respect of passages to North America, must make application to the justices in petty or quarter sessions for the district or place in which he shall reside, for a licence to carry on such business, which the justices there assembled are authorized

to grant, according to the form contained in the schedule (C.); and where any such licence shall be granted, the justices are to cause notice thereof to be forthwith transmitted by the post to the Colonial Land and Emigration Commissioners at their office in London. No such licence shall be granted, unless the party applying for the same shall show to the satisfaction of the justices, that he has given notice by the post to the Colonial Land and Emigration Commissioners of his intention to apply for the same, twenty-one clear days at least before such application; such notice to be in the form contained in the schedule (D.).

Penalties for obtaining Passage Money fraudulently, &c.—By sect. 21, if any licensed broker or dealer shall receive money for or on account of the passage of any passenger to any port in North America, without having a written authority to act as agent for the party on whose behalf the contract for such passage purports to be made, or shall by any fraud or false pretence whatsoever induce any person to purchase, hire, or engage a passage in any ship for any such voyage; he is liable, upon conviction, to a penalty not exceeding 10*l.* and the forfeiture of his licence, if the justices shall think fit; in which case they are to cause notice of such forfeiture in the form contained in the schedule (E.), to be forthwith transmitted by the post to the Colonial Land and Emigration Commissioners at their office in London.

When Passage Money to be returned.—By sect. 22, if any person shall have entered into a contract for a passage for himself or his family from any port in the United Kingdom to any port out of Europe, and not being in the Mediterranean Sea, and if such passenger shall be at the place of embarkation at the time appointed by such contract, and shall apply for such passage, and shall on demand pay or tender such part of the passage money not already paid,—and if, owing to the previous departure of the ship, or the neglect, refusal, or other default of the owner, charterer, or master thereof, or of the party with whom such passage or passages shall have been contracted for, such passenger shall not obtain such passage, or shall not within a reasonable time obtain a passage by some other equally eligible vessel, and in the meantime be paid subsistence money, or be provided with lodging and maintenance, as after-mentioned,—such passenger shall be entitled to recover all monies which he shall have paid for such passage from the party to whom he shall have paid the same, or from the owner or charterer of the ship for whom such

party shall be the agent, and also such further sum not exceeding 10*l.* in respect of each such passage, as shall, in the opinion of the justices who shall adjudicate on the complaint, be a reasonable compensation for the loss or inconvenience occasioned to each passenger or his family by the loss of such passage.

Subsistence in case of Detention.—By sect. 23, if any ship shall not actually put to sea and proceed upon the intended voyage on the day for that purpose appointed by any contract made by the owner, master, or charterer of such ship, or by their agent, with any passenger, who shall on that day be on board the same, or ready to proceed on such intended voyage, then the master shall victual every passenger in like manner as if the voyage had commenced; and if the ship does not put to sea after the interval of two clear working days from the day appointed for sailing, he is liable to pay to every such passenger, instead of victualling him, subsistence money after the rate of one shilling in respect of each day of delay, until the actual clearing out and final departure of the ship on such voyage. But such subsistence money is not to be payable in respect of any unavoidable detention by wind or weather, nor to any passenger who shall, with his own consent, be suitably lodged and maintained on shore at the expense of the parties who are bound to provide him with a passage.

Where Passengers must be landed.—By sect. 24, the master of any ship shall not land or put on shore any passenger, without his previous consent, at any port or place other than the port or place at which he may have contracted to land or put such passenger on shore.

Maintenance of Passengers after their Arrival.—By sect. 25, at the close of the voyage, every passenger shall, during the space of forty-eight hours afterwards, be entitled to continue on board such ship, and to be provided for and maintained in the same manner as during such voyage, unless in the ulterior prosecution of her voyage any such ship shall quit the port within the period of forty-eight hours.

Penalties for Offences against the Act.—By sect. 27, if in any ship such lower deck or platform, of such thickness as before directed, shall not be laid and continued throughout the whole duration of the voyage, in such manner as before required; or if the height between such lower deck or platform and the upper deck shall be less than six feet; or if there shall be more than two tiers

of berths ; or if such berths shall not be securely constructed, or shall not be of the dimensions before required ; or if there shall not be throughout the whole duration of any such voyage such an interval as is before prescribed between the deck and the floor of the berths ; or if any such ship shall clear out and 'put to sea, not having on board tanks or sweet casks of such size and number as aforesaid, and such water and provisions as aforesaid, for the use and consumption of the passengers, of the kind, and to the amount, and in the proportion before required ; or if such water and provisions shall not be issued in manner before required ; or if such ship shall not be provided with good boats according to the rates aforesaid ; or if copies of the act shall not have been kept on board, and produced on demand as before required ; or if there shall not be on board any such vessel such medical practitioner as aforesaid, or such medicines and other things necessary to the medical treatment of the passengers as before required ; or if any such ship shall be cleared out, before such list of passengers as before mentioned shall have been delivered in manner and form aforesaid to such officer as aforesaid ; or if the additions to such list, and such additional separate list or lists as aforesaid, be not made in the cases aforesaid, and delivered in the cases in which they are before required to be delivered ; or if any such list, or the additions to the same, shall be wilfully false ; or if any such list, including the additions if any to the same, shall not be exhibited to or deposited with the proper officer at the port at which it is before required to be exhibited or deposited ; or if any passenger shall, without his previous consent, be put on shore at any place other than the place at which the master had contracted to land him ; or if he shall not be allowed to continue on board such ship in manner before provided, or if every such facility for inspection shall not be afforded as before required ; the master of any such ship shall, for and in respect of each and every such offence, be liable, on such summary conviction as after mentioned, to the payment of a fine not exceeding 50*l.* sterling British money.

Recovery of Penalties.—By *sect. 29*, all penalties may be sued for and recovered to the use of her Majesty as after is mentioned ; (that is to say), in the United Kingdom, by any government emigration agent, or any collector or comptroller or other officer of the Customs, authorized in writing by the Commissioners of the Customs, to sue for penalties under the act ; and in any of her Majesty's possessions abroad, by any such government agent, collector, comp-

troller, or other officer, and also by any officer authorized to sue for penalties under the act, by writing under the hand and seal of the governor of any such possession; all sums of money recoverable as return of passage money, subsistence money, or compensation, may be sued for and recovered by any passenger entitled thereto, or by any of such officers as aforesaid on behalf of any such passenger; and all such penalties and sums of money may be recovered before any two or more justices acting in any part of her Majesty's dominions in which the offence shall have been committed, or the cause of complaint shall have arisen, or in which the offender or party complained against shall happen to be. Complaint may be made before any one justice, who is to issue a summons requiring the party to appear; which must be served on him, or left at his last place of residence or of business, or on board any ship to which he may belong. Upon his appearance, or default to appear, two justices may proceed summarily on the case, and either with or without any written information; and upon proof of the offence, or of the complainant's claim, upon the oath of one credible witness, the justices may convict the offender, or adjudicate the complaint, and order the offender or party complained against to pay the penalty, or the sum of money sued for, or so much thereof as they shall think the complainant justly entitled to, and also to pay the costs attending the information or complaint, summons, conviction, or adjudication. Upon nonpayment of any such money, the same may be levied by distress and sale, together with the costs of such distress and sale; and the justices may also order the party to be detained in custody until return can conveniently be made to the warrant of distress, unless he give sufficient security for his appearance before them on the day appointed for such return, not being more than eight days from the time of taking such security. If it shall appear to the justices, by the admission of the party, or otherwise, that no sufficient distress can be had, they may refrain from issuing such warrant; and in such case, or if, upon the return thereof, such insufficiency shall be made to appear to the justices, they may by warrant cause the party to be committed to gaol, not exceeding three months, unless such monies and costs be sooner paid and satisfied.

Evidence and Witnesses.—By *sect. 30*, if in any proceeding a question should arise, whether any person is a government emigration agent, or an officer of the Customs, *vivâ voce* evidence may be given of such fact. By *sect. 31*, any passenger shall not be

deemed an incompetent witness in any proceeding for the recovery of passage money. And by *sect. 32*, no distress is to be unlawful for informality.

Limitation of Prosecutions.—By *sect. 35*, no prosecution, information, or complaint shall be brought in any of her Majesty's possessions abroad, after the expiration of twelve calendar months next succeeding the commencement of any such voyage as aforesaid, nor in the United Kingdom, after the expiration of twelve calendar months next after the return of the ship, or of the master, to the United Kingdom.

Exemption of particular Ships.—By *sect. 36*, the act is not to extend to ships, where the number of passengers shall not exceed thirty, nor to any of her Majesty's ships of war, or to any ship in the service of the Admiralty, or to ships of war or transports in the service of the East India Company.

Act extended to Voyages from the Colonies.—By *sect. 37*, the act is to extend to the carriage of passengers by sea from any of the *British West India Islands*, the *Bahamas*, and *British Guiana*, and from *Malta*, the *British Possessions in Africa*, and the *Mauritius*, to any other place whatsoever; with the exception, by *sect. 44*, of the following subjects; the keeping copies of the act on board; the use of the form of receipt required to be given for passage money; the licensing of passage brokers; and the return of passage money and compensation, in case the party cannot be forwarded by the appointed ship, or by some other eligible vessel, and victualling, or the payment of subsistence money, in case of detention.

And to Foreign Vessels.—By *sect. 50*, the provisions of the act are also to extend to foreign vessels carrying passengers upon any voyage from any port in the United Kingdom to or from any port out of Europe, and not being within the Mediterranean Sea, or upon any other voyage to which the provisions of the act shall for the time being extend.

But not to Cabin Passengers.—By *sect. 51*, the act is not to extend to the class of passengers commonly known and understood by the name of cabin passengers.

Title of the Act.—By *sect. 53*, in all proceedings it shall be sufficient to cite the act by the title of "The Passengers' Act."

Form of a Passenger Broker's Licence, under section 20 of the above Act (a). ¶

A. B. of —, in the —, having shown to the satisfaction of us, the undersigned justices, in petty [or “quarter”] sessions assembled, that he hath duly given notice to her Majesty's Colonial Land and Emigration Commissioners, of his intention to make application for a licence to carry on the business of a passage broker or passage dealer, in respect of passages to North America : We the undersigned justices, so assembled, and having had no sufficient cause shown to us why the said A. B. should not receive such licence, do hereby license and authorise the said A. B. to carry on the business of a passenger broker or passage dealer as aforesaid, until the 31st December in the year following the present year, unless this licence shall be sooner determined by forfeiture for misconduct on the part of the said A. B., as in the Passengers' Act is provided.

Given under our respective hands and seals, this — day of —, 1843, at —.

— (L. S.)

justice of the peace.

— (L. S.)

justice of the peace.

6. *Regulations as to Ships Laden with Timber from North America.*

No Timber to be stowed on Deck.]—By 5 & 6 Vict. c. 17, s. 1, no part of the cargo of any ship, wholly or in part laden with timber, or wood goods, and clearing from any *British port* in *North America*, or the settlement of *Honduras*, for any port in the United Kingdom, between the 1st day of September and the 1st day of May in each year, shall be stowed or placed during any part of the voyage upon or above the deck; and the captain or master shall not be permitted to sail, without first procuring a certificate from the clearing officer that all the cargo is below deck. And, by *sect. 2*, if any captain, owner, supercargo, or other person having command of any such ship, shall so place, or cause or permit to be so placed, any part of the cargo, he is liable to a penalty not exceeding 100*l.* But nothing is to prevent the carrying upon deck the necessary store spars for the vessel's use, or the removal on deck of a portion of the cargo of such ship or vessel, in cases where the same may be rendered necessary by the springing of a leak, or other damage during the voyage, nor to any ship which may have cleared out from any port in British North America, or the Settlement of Honduras, before the 1st day of September.

Proceedings.]—By *sect. 3*, all indictments and informations for any offence, and all proceedings for the recovery of any penalty, may be preferred and prosecuted by any person or persons whomso-

(a) See *ante*, p. 1153.

ever, before such and the same courts, magistrates, and justices of the peace, and in such and the same manner, and with and under and subject to all such and the same rules, provisoes, conditions, and restrictions, and such and the like regulations as to the application and distribution of the penalties recovered, as in the case of any proceedings for the recovery of any fines, penalties, or forfeitures incurred under any act in force for the prevention of smuggling (*d*), or relating to the customs, or to trade, or navigation.

Form of Warrant of Commitment.—By *sect. 5*, all warrants of justices of the peace for recovering any penalty inflicted by the act shall be drawn in the form, or to the effect, in the schedule; and no such warrant shall be held void by reason of any defect therein, provided it be alleged in the warrant, that the party has been convicted of any offence against the act, and it shall appear to the court or judge, that such conviction proceeded upon good and valid grounds.

By *sect. 6*, the act is to continue in force until the 1st day of May, 1845.

Form of Warrant of Commitment for a Penalty.

— of —,) To —, and to the gaol or keeper of the —, at —, in the
to wit.) —.

Whereas A. B. is this day duly convicted before us, — and —, esquires, two of her Majesty's justices of the peace in and for the — of —, being the place in which the said A. B. was found, upon the information of —, for that after the passing of a certain act of parliament made and passed in the year of our Lord 1842, intituled "An Act for preventing Ships, clearing out from any port of British North America or in the Settlement of Honduras, from loading any part of their Cargo or Timber upon Deck," and between the 1st day of September, which was in the year of our Lord —, and the 1st day of —, which will be in the year of our Lord —, to wit, on the — day of —, in the said year of our Lord —, a certain vessel called the —, of which the said A. B. was then the person having the command thereof, the said vessel being laden with timber and wood goods, cleared from a certain British port in North America, to wit, the port of —, for a certain port in the United Kingdom, to wit, the port of —, and also for that afterwards, and during a certain part of the said voyage of the said vessel as aforesaid, and upon the high seas, the said A. B., so being such person having the command of the said vessel, did place, and did cause and permit to be placed, a certain part of the cargo of the said vessel, to wit, —, upon the deck of such vessel, to wit, on the day and year last aforesaid, at — aforesaid, in the said —, not being the necessary store spars for the said vessel's use, during the said voyage, nor a portion of the cargo of the said vessel removed on deck in a case rendered necessary by the springing a leak, or other damage during the said voyage, contrary to the form of the statute in that case made and provided: And whereas the said A. B. having been duly summoned to appear and answer the said information,

this — day of — instant, at —, in the said — of —, we, the said justices, upon due consideration had in the premises, did then and there adjudge that the said A. B. had forfeited for his said offence the sum of £—, which said sum of £— has not been paid; these are therefore to require you, the said —, forthwith to take, carry, and convey the said — to the gaol at —, in the — of —, and to deliver him into the custody of the gaoler or keeper of the said gaol; and we, the said justices, do hereby authorize and require you, the said gaoler or keeper of the said gaol, to receive and take the said A. B. into your custody, and him safely to keep until he shall duly pay the said sum of £—. Given under our hands and seals, at —, in the — of —, this — day of —, in the year of our Lord —.

Shooting.

BY 7 Will. 4 & 1 Vict. c. 85, s. 3, whosoever shall *shoot* at any person, or shall, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, *with intent to commit the crime of murder*, shall, although no bodily injury shall be effected, be guilty of *felony*, punishable with *Transportation for life, or not less than fifteen years, or Imprisonment not exceeding three years*, with or without solitary confinement and hard labour, by *sect. 8*.

By *sect. 4*, whosoever unlawfully and maliciously shall *shoot* at any person, or shall, by drawing a trigger or in any other manner, attempt to discharge any kind of loaded arms at any person, *with intent to maim, disfigure, or disable* such person, or to do some other *grievous bodily harm* to such person, or with intent to *resist or prevent the lawful apprehension or detainer* of any person, shall be guilty of *Felony*, punishable as above.

And see *Smuggling*.

Shops.

BY 7 & 8 Geo. 4, c. 29, s. 15, if any person shall break and enter any shop, warehouse, or counting-house, and steal therein any chattel, money, or valuable security, every such offender is punishable with *Transportation for life, or not less than seven years, or Imprisonment not exceeding four years, with or without whipping*; and (by *sect. 4*), *hard labour and solitary confinement*.

Shows—See *Metropolitan Police*, p. 573.

Shrubs—See Gardens, Trees.

Silk Manufacturers—See Factories, Servants and Workmen,
p. 1105.

Slaughter Houses—See Horses, p. 472.

Slave Trade.

BY 5 Geo. 4, c. 113, various punishments and penalties are imposed for different offences connected with the slave trade. Those which more immediately concern the duties of a magistrate are as follows.

Conveying Slaves on the High Seas.—By 5 Geo. 4, c. 113, s. 9, if any British subject, or any person residing or being within any of the King's dominions, shall, except in such cases as are by the act permitted, upon the high seas, or in any haven, river, creek, or place where the admiral has jurisdiction, knowingly and wilfully carry away, convey, or remove, or aid or assist in carrying away, conveying, or removing any person as a slave, or for the purpose of his being imported or bought as a slave, into any island, colony, country, territory, or place whatsoever, or for the purpose of his being sold, transferred, used or dealt with as a slave; or shall knowingly and wilfully ship, embark, receive, detain, or confine, or assist in shipping, &c. on board any ship, vessel, or boat, any person for the purpose of his being carried away, conveyed, or removed as a slave, or being imported or brought as a slave into any island or place whatsoever, or for the purpose of his being sold, transferred, used, or dealt with as a slave; the offender is declared to be guilty of *piracy, felony, and robbery*, which now, by 7 Will. 4 & 1 Vict. c. 91, is punishable with *Transportation for life, or not less than fifteen years, or Imprisonment not exceeding three years, with or without hard labour and solitary confinement.*

Dealing in Slaves, and other Offences connected with them.—By sect. 10, except in such special cases as are by the act permitted, if any person shall deal or trade in, purchase, sell, barter, or transfer slaves, or persons intended to be dealt with as slaves, or contract for so doing; or shall carry away, or remove, or contract for so doing, slaves or such other persons, or shall import or bring, or contract for

the importing, into any place whatsoever, slaves or such other persons; or shall ship, tranship, embark, receive, detain, or confine on board, or contract for the shipping, &c. on board of any vessel or boat, slaves or such other persons; or shall ship, tranship, &c. on board, or contract for the shipping, &c. on board of any vessel or boat, slaves or such other persons; or shall fit out, man, navigate, equip, dispatch, use, employ, let or take to freight or on hire, or contract for the fitting out, &c. any ship, vessel; or boat, in order to accomplish any of the objects or contracts before declared unlawful; or shall knowingly and wilfully lend or advance, or become security for the loan or advance, or contract for the lending or advancing or becoming security for the loan or advance of, money, goods, or effects employed or to be employed in accomplishing any of the objects or contracts before declared unlawful; or shall knowingly and wilfully become guarantee or security, or contract for becoming security, for agents employed or to be employed in accomplishing any of such objects or contracts; or in any other manner engage, or contract to engage, directly or indirectly therein, as a partner, agent, or otherwise; or shall knowingly and wilfully ship, tranship, lade, receive, or put on board, or contract for shipping, &c. on board of any ship, vessel, or boat, money, goods, or effects to be employed in accomplishing any of the objects or contracts aforesaid; or shall take the charge or command of, or navigate, or enter and embark on board of any ship, vessel, or boat as captain, master, mate, surgeon, or supercargo, knowing that the same is actually employed, or is in that voyage, or upon that occasion, intended to be employed in accomplishing any of the objects or contracts aforesaid; or shall knowingly and wilfully insure, or contract for the insuring of, any slaves, or any property or other subject-matter engaged or employed in accomplishing any of the objects or contracts before declared unlawful; or shall wilfully and fraudulently forge or counterfeit any certificate of valuation, sentence, or decree of condemnation or restitution, copy of such sentence or decree, or any receipt required by the act, or any part of such certificate, &c.; or shall knowingly and wilfully utter or publish the same, knowing it to be forged or counterfeited, with intent to defraud; in any such case the offenders, and their procurers, counsellors, aiders, and abettors, are declared to be *felons*, punishable with *Transportation, not exceeding fourteen years, or Imprisonment to hard labour not exceeding five years, nor less than three.*

Seamen serving on board Slave Ships.—By sect. 11, except in such special cases as are permitted by the act, if any person shall enter and embark on board, or contract for entering on board, of any ship, vessel, or boat, as petty officer, seaman, marine, or servant, or in any other capacity, knowing that such vessel is actually employed, or is in the same voyage, or upon the same occasion, in respect of which they shall so enter and embark on board, or contract so to do as aforesaid, intended to be employed in accomplishing any of the objects or contracts before declared unlawful; the offenders and their procurors, counsellors, aiders, and abettors are declared to be guilty of a *misdeemeanor*, punishable by imprisonment for a term not exceeding two years.

Smuggling.

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| 1. <i>Vessels and Boats liable to Forfeiture.</i> | search, seize, and detain <i>Vessels,</i> |
| 2. <i>Vessels requiring Licences, and Penalties for unlicensed Vessels, &c.</i> | <i>Goods, and Persons.</i> |
| 3. <i>What Goods liable to Forfeiture.</i> | 5. <i>Penalties for various Offences.</i> |
| 4. <i>Power of Custom House Officers, &c. to</i> | 6. <i>Felonies and transportable Offences.</i> |
| | 7. <i>Jurisdiction of Justices, and proceedings on summary Conviction.</i> |

1. *Vessels and Boats liable to Forfeiture.*

CERTAIN Vessels found within certain distances of the Coast to be forfeited.—By 3 & 4 Will. 4, c. 53, s. 2, if any vessel not being square rigged, or any boat, either belonging in whole or in part to British subjects, or having half the persons on board British subjects, shall be found or discovered to have been one hundred leagues off the coast of the United Kingdom; or if any vessel, either belonging in the whole or in part to British subjects, or having half the persons on board such subjects, or any foreign vessel not being square rigged, or any foreign boat, in which there shall be one or more British subjects, shall be found within four leagues of that part of the United Kingdom which is between the North Foreland on the coast of Kent and Beachley Head on the coast of Sussex, or within eight leagues of any other part of the coast; or if any foreign vessel or boat shall be found to have been within one league of the coast, or if any vessel or boat shall be found to have been within one league of the islands of Guernsey, Jersey, Alderney, Sark, or Man, respectively, or within any bay, harbour, river, or creek, of or belonging to any one of those islands; any such vessel or boat having, or

having had, on board, or in any manner attached thereto, or conveying, or having conveyed in any manner, any spirits not being in a cask or package containing forty gallons, at the least, or any tea exceeding six pounds weight in the whole, or any tobacco or snuff not being in a cask or package containing 450 pounds weight, at least, or being packed separately in any manner within any cask or package, or any cordage or other article adapted and prepared for slinging or sinking small casks, or any casks or other vessel whatsoever of less size or content than forty gallons, of the description used for the smuggling of spirits; then the said spirits, tea, tobacco, snuff, together with the casks or packages containing the same, and the cordage or other articles, casks, and other vessels of the description aforesaid, and also the vessel or boat, shall be forfeited.

But by 6 & 7 Will. 4, c. 60, s. 11, where the casks or packages containing *spirits, tobacco, or snuff*, are of such size or dimensions as may be legally imported, no forfeiture, detention, or prosecution is to take place.

In a conviction under the above section of the 3 & 4 Will. 4, c. 53, it is sufficient to allege, that the casks were "in a certain manner attached to the vessel," without specifying the mode in which they were attached; and it is not necessary to negative that the casks were part of the cargo, if the conviction state that they were not included in the official documents of the vessel. But it will be bad, if it alleges any thing in the *alternative*,—as if, in describing the casks, it alleges that they were "of the sort or description used, or intended to be used," for the smuggling of spirits (*e*).

Forfeiture of Vessels having prohibited Goods on board.—By sect. 3, if any vessel or boat whatever shall arrive, or shall be found arriving, or discovered to have been, within any port, harbour, river, or creek, not being driven there by stress of weather or other unavoidable accident, having on board, or in any manner attached thereto, or having had on board or attached, or conveying, or having conveyed in any manner within any such port, any such spirits, tobacco, or snuff, as specified in section 2, every such vessel or boat, together with such spirits, tobacco, or snuff, shall be forfeited. But if it shall be made appear to the satisfaction of the Commissioners of the Customs, that the spirits, tobacco, or snuff were on board, without the knowledge or privity of the owner or master of the vessel, and

without any wilful neglect or want of reasonable care on their part, the Commissioners may deliver up the vessel to the owner or master.

Certain cases of exemption.—By sect. 4, no vessel is liable to forfeiture, on account of any tobacco or snuff from the East Indies, being in packages of 100lbs. weight each, at least, or on account of any cigars, being in packages of 100lbs. weight at least; or on account of any tobacco being made up in rolls, being the produce of and imported from the state of Columbia, and in packages containing 320lbs. weight each at least; or on account of any tobacco of the dominions of the Turkish empire, which may be separated or divided in any manner within the outward package, provided such package be a hogshead, cask, chest, or case, containing 454lbs. weight net, at least; or on account of any rum from the British plantations in casks containing twenty gallons, at the least; or on account of any spirits, tea, or tobacco really intended for the consumption of the seamen and passengers on board during their voyage, and not being more in quantity than is necessary for that purpose; nor any square rigged vessel, on account of any tea, or of any spirits in glass bottles, being really part of the cargo, and included in the manifest of the ship; nor is any vessel liable to forfeiture, if really bound from one foreign port to another foreign port, and pursuing such voyage, wind and weather permitting.

Vessels throwing overboard Goods during chase.—By sect. 5, when any vessel or boat belonging in the whole or in part to British subjects, or having one-half of the persons on board British subjects, shall be found within 100 leagues of the coast of this kingdom, and shall not bring to upon signal made by any vessel or boat in his Majesty's service, or in the service of the revenue, hoisting the proper pendant and ensign in order to bring such vessel or boat to, and thereupon chase shall be given; if any person on board such vessel so chased shall during the chase, or before such vessel shall bring to, throw overboard any part of the lading of such vessel, or shall stave or destroy any part of such lading, to prevent seizure thereof, the vessel shall be forfeited. All persons escaping from such vessel, or from any foreign vessel, during any such chase, shall be deemed and taken to be British subjects, unless it shall be proved to the contrary.

Vessels in Port with a Cargo found afterwards in Ballast.—By sect. 6, if any vessel whatever shall be found within the limits of any port with a cargo on board, and shall afterwards be found light, or

in ballast, and the master is unable to give a due account of the port where such vessel shall have legally discharged her cargo, the vessel shall be forfeited.

Vessels from Guernsey and Jersey, &c.—By sect. 7, no vessel belonging wholly or in part to British subjects, shall sail from Guernsey, Jersey, Alderney, Sark, or Man, without a clearance, whether in ballast, or having a cargo; and if with a cargo, the master must give bond in double the value of the vessel and cargo, for duly landing the same at the port for which the vessel clears; and every such vessel not having such clearance, or which having a clearance for a cargo, shall be found light, or with any part of the cargo discharged before delivery thereof at the port specified in the clearance, unless through necessity, or for the preservation of the vessel, to be proved to the satisfaction of the Commissioners of the Customs, shall be forfeited.

Vessels not bringing to may be fired into.—By sect. 8, in case any vessel or boat, liable to seizure or examination under any act or law for the prevention of smuggling, shall not bring to on being required so to do, on being chased by any vessel or boat in her Majesty's navy, having the proper pendant and ensign of her Majesty's ships hoisted, or by any vessel or boat duly employed for the prevention of smuggling, having a proper pendant and ensign hoisted, the captain or commander of the King's or revenue vessel or boat (first causing a gun to be fired as a signal), may fire at or into such vessel or boat; and shall be, as well as any other person acting in his aid, or by his direction, indemnified for so doing.

It is important that neither a King's ship, nor a revenue vessel, should chase a smuggler, without hoisting the proper pendant and ensign; for if they neglect to do so, and fire into the smuggler, the crew on board the latter, if they return the fire, cannot be indicted for maliciously shooting, under the 59th section of the act (f).

Vessels not to hoist any Colours worn by the King's Ships.—By sect. 9, if any person shall wear, carry, or hoist, in or on board any vessel whatever belonging to British subjects, whether the same be merchant or otherwise, without particular warrant for so doing, the Union Jack, or any pendant, ensign, or colours usually worn by the King's ships, or any flag, jack, pendant, ensign, or colours resembling those of his Majesty, or those used on board his Majesty's

ships, or any other ensign or colours than those by any proclamation of his Majesty prescribed to be worn; the master, or other person having the charge or command thereof, or the owner or owners being on board the same, and every other person so offending, shall forfeit 50*l.* (g); and any officer of the navy on full pay, or any officer of the customs or excise, may enter on board such vessel, and seize any such flag, which shall thereupon be forfeited.

Boats used in removing Goods.—By sect. 10, all vessels and boats made use of in the removal, carriage, or conveyance of any goods liable to forfeiture, shall also be forfeited.

Boats to have Name of Vessel, &c. thereon.—By sect. 11, the owner of every vessel belonging in the whole or in part to British subjects, must have painted upon the outside of the stern of every boat belonging to such vessel the name of such vessel, and the port to which she belongs, and the master's name withinside the transom, in white or yellow Roman letters, not less than two inches in length, on a black ground, on pain of forfeiture of such boat.

Other Boats.—By sect. 12, the owner of every boat not belonging to any vessel must paint upon the stern, in white or yellow Roman letters of two inches in length, on a black ground, the name of the owner of such boat, and the port or place to which she belongs, on pain of the forfeiture of such boat.

Pilot and Fishing Boats.—By sect. 13, the owner of every vessel or boat, employed on the coasts of the united kingdom in piloting or fishing, must have the same painted or tarred entirely black, except the name or other description required to be painted on such vessel or boat; and every such vessel or boat found not so painted or tarred, and every boat so painted as to resemble any boat usually employed for the prevention of smuggling, or in any other employment in his Majesty's service, shall be forfeited, unless the party has a licence from the Commissioners of the Customs for its being otherwise painted.

Vessels having devices for running Goods.—By sect. 14, all British vessels having false bulkheads, false bows, double sides or bottoms, or any secret or disguised place whatsoever, adapted for the purpose of concealing goods, or having any hole, pipe, or other device in or about the vessel adapted for the purpose of running

¹ (g) But see *post*, 4 & 5 Will. 4, c. 13, s. 11.

goods, shall be forfeited, with all the guns, furniture, ammunition, tackle, and apparel belonging to such vessel. And all foreign vessels, not being square rigged, coming to or arriving at any port, having on board any goods liable to the payment of duties, or prohibited, concealed in false bulk heads, false bows, double sides or bottoms, or any secret or disguised place whatsoever, shall also be forfeited.

2. *Vessels requiring Licences, &c.*

Vessels of certain proportions, &c. must be licensed.] — By sect. 16, all vessels belonging in the whole or in part to British subjects, not being square rigged or propelled by steam,—and all vessels so belonging, whether propelled by steam or otherwise, being of less burthen than 200 tons, of which the length is to the breadth in a greater proportion than three feet six inches to one foot,—and all such last-mentioned vessels carrying arms for resistance,—and all vessels of more than 200 tons burthen, belonging as aforesaid, armed with more than two carriage guns of a calibre exceeding four pounds, and with more than two muskets for every ten men,—and all boats belonging as aforesaid,—which shall be found within 100 leagues of the coast of the United Kingdom, shall be forfeited, unless the owners thereof shall have obtained a licence from the commissioners of the customs in the manner after directed. But by the 6 & 7 Will. 4, c. 60, s. 8, boats solely engaged in fishing on the coast of Scotland are not required to be licensed.

Vessels navigated by more than a certain number of persons.— By sect. 17, every vessel or boat belonging in the whole or in part to British subjects, or whereof one half of the persons on board shall be such subjects (not being a lugger, and at the time fitted and rigged as such,) which shall be navigated by a greater number of men (officers and boys included) than in the following proportions; (that is to say), if of thirty tons or under, and above five tons, four men; if of sixty tons or under, and above thirty tons, five men; if of eighty tons or under, and above sixty tons, six men; if of one hundred tons or under, and above eighty tons, seven men; and above that tonnage, one man for every fifteen tons of such additional tonnage; or if a lugger, then in the following proportions (that is to say), if of thirty tons or under, eight men; if of fifty tons or under, and above thirty tons, nine men; if of sixty tons or under, and above fifty tons, ten men; if of eighty tons or under, and above sixty tons, eleven men; if of one hundred tons or under, and above eighty tons,

twelve men; and if above one hundred tons, one man for every ten tons of such additional tonnage,—which shall be found within one hundred leagues of the coast of the United Kingdom,—shall be forfeited, unless such vessel, boat, or lugger shall be especially licensed for that purpose by the commissioners of the customs.

Using Vessels in manner not mentioned in Licence.—By sect. 22, when any vessel shall be found or discovered to have been used or employed in any manner, or in any limits other than such as shall be specified in the licence from the commissioners of the customs required by the act, or if such licence shall not be on board, or shall not be produced and delivered for examination to any officer of the army, navy, or marines duly employed for the prevention of smuggling, and on full pay, or any officer of customs or excise demanding the same; the vessel and all the goods laden on board shall be forfeited.

Counterfeiting Licences.—By sect. 24, if any person shall counterfeit, erase, alter, or falsify, or cause to be counterfeited, &c. any licence granted by the commissioners of customs, or shall knowingly make use of any licence so counterfeited, erased, altered or falsified; he is liable to a penalty of 500*l*.

3. *What Goods liable to Forfeiture.*

Goods concealed on board.—By sect. 15, if any goods, which are subject to any duty or restriction in respect of importation, or which are prohibited to be imported, shall be found concealed in any manner on board any vessel, or shall be found, either before or after landing, to have been concealed in any manner; such goods, and all other goods which shall be packed with them, shall be forfeited.

Goods unshipped without payment of Duty.—By sect. 28, if any goods liable to the payment of duties shall be unshipped from any vessel (customs or other duties not being first paid or secured); or if any prohibited goods whatsoever shall be imported; or if any goods whatsoever, which shall have been warehoused or otherwise secured either for home consumption or exportation, shall be clandestinely or illegally removed from or out of any warehouse or place of security; all such goods shall be forfeited, together with all the horses and other animals, and all carriages and other things made use of in the removal of the goods.

Spirits and Tobacco found without a permit.—By sect. 29, all

spirits or tobacco, which shall be found removing, without a legal permit for the same, shall be deemed to be spirits or tobacco respectively liable to, and unshipped without payment of, duty, unless the party in whose possession the same shall be found or seized shall prove to the contrary.

Restricted Goods.—By sect. 30, all goods, the importation of which is in any way restricted, which are of a description admissible to duty, and which shall be found and seized under any law relating to customs or excise, shall, for the purpose of proceeding for the forfeiture of them, or for any penalty incurred in respect of them, be described in any information exhibited on account of such forfeiture or penalty, as goods liable to, and unshipped without payment of, duties.

Goods prohibited to be exported.—By sect. 31, if any goods, which are prohibited to be exported, shall be put on board any vessel or boat with intent to be laden or shipped for exportation, or shall be brought to any quay, wharf, or other place for that purpose; or if any such goods shall be found in any package produced to the officer of the customs, as containing goods not so prohibited; then not only the prohibited goods, but all other goods packed therewith shall be forfeited.

4. *Power of Officers to search, seize, and detain Vessels, Goods, and Persons.*

Vessels, &c. liable to Forfeiture may be seized.—By sect. 32, all vessels and boats, and all goods whatsoever liable to forfeiture, may be seized in any place, either upon land or water, by any officer of the army, navy, or marines, duly employed for the prevention of smuggling, and on full pay, or by any officer of customs or excise, or by any person having authority to seize from the commissioners of customs or excise; and all vessels or boats and goods so seized shall, as soon as conveniently may be, be delivered into the care of the proper officer appointed to keep them.

Penalty on Officers making collusive seizures, &c.—By sect. 33, if any officer of the customs or excise, or any officer or officers of the army, navy, or marines, duly employed for the prevention of smuggling, and on full pay, or any other person whatsoever duly employed for the prevention of smuggling, shall make any collusive seizure, or deliver up, or make any agreement to deliver up, or not to seize, any vessel or boat, or any goods, liable to forfeiture, or shall take any

bribe, gratuity, recompense, or reward, for the non-performance of his duty, he is liable to a penalty of 500*l.*, and is rendered incapable of serving his Majesty in any office whatsoever, either civil or military. And every person who shall give or offer, or promise to give, or procure to be given, any bribe, recompense, or reward to, or shall make any collusive agreement with, any such officer or person as aforesaid, to induce him in any way to neglect his duty, or to do, conceal, or connive at, any act whereby any of the provisions of any act of parliament relating to the revenue of customs may be evaded, shall forfeit the sum of 200*l.*

An information under this section should show that the officer was duly employed for the prevention of smuggling, and that it was his peculiar duty to do what he was bribed not to do (*h*).

Searching suspected Vessels and persons.—By sect. 34, any officer of the army, navy, or marines, duly employed for the prevention of smuggling, and on full pay, or any officer of customs producing his warrant or deputation (if required), may go on board any vessel within the limits of any port, and rummage and search the cabin and all other parts of such vessel for prohibited and uncustomed goods, and remain on board during the whole time that the same shall continue within the limits of such port, and also search any person either on board, or who shall have landed from any vessel, provided he shall have good reason to suppose that such person hath any uncustomed goods secreted about his or her person. And if any person shall obstruct any such officers in going or remaining on board, or in entering, or searching such vessel or person; he is liable to a penalty of 100*l.* (*i*)

Before search, persons may require to be taken before a Justice, &c.—By sect. 35, before any person shall be so searched, he may require the officer to take him before any justice of the peace, or the collector, comptroller, or other superior officer of the customs, who shall determine whether there is reasonable ground to suppose that he has any uncustomed goods about his person; and if it shall appear to such justice, &c. that there is such reasonable ground, he may direct such person to be searched in such manner as he shall think fit; but if it shall appear to him that there is not such reasonable ground, he shall forthwith discharge such person. No person, being a female, shall be searched by any other person, than a female

(*h*) *R. v. Everett*, 8 B. & C. 114.

(*i*) See 4 & 5 Will. 4, c. 13, s. 4, *post*, p. 1189.

duly authorized for that purpose by the commissioners of the customs.

Penalty on Officers for Misconduct.—By *sect. 36*, if any such officer shall not take such person with reasonable dispatch before a justice or superior officer of the customs, when so required, or shall require such person to be searched, not having reasonable ground to suppose that he has any uncustomed or prohibited goods about his person; he is liable to a penalty of 10*l.* (*h*).

Penalty on parties denying the truth.—By *sect. 37*, if any passenger or other person on board any vessel shall, upon being questioned by any officer of the customs whether he has any foreign goods upon his person or in his possession, deny the same, and any such goods shall after such denial be discovered upon his person or in his possession; he is liable to a forfeiture of the goods, and treble their value.

Officers properly authorized may search houses, &c.—By *sect. 38*, any officer of customs, having a writ of assistance under the seal of the Court of Exchequer, may take a constable or other public officer inhabiting near the place, and may in the daytime enter into and search any house, shop, cellar, warehouse, room, or other place, and in case of resistance break open doors, chests, trunks, and other packages, and may there seize and from thence bring uncustomed or prohibited goods, and put and secure the same in the custom-house warehouse in the port next to the place from whence such goods shall be so taken. And for the purposes of the act, any such constable, or other public officer duly sworn as such, may act without the limits of any parish or other place for which he shall be so sworn. And by *sect. 39*, all such writs of assistance shall continue in force during the whole of the reign in which they shall have been granted, and for six months afterwards.

Officers may stop Carts, &c.—By *sect. 40*, any officer of customs or excise, or other person acting in his aid, or duly employed for the prevention of smuggling, may, upon reasonable suspicion, stop and examine any cart, waggon, or other means of conveyance, for the purpose of ascertaining whether any smuggled goods are contained therein; and if no such goods shall be found, then the officer or other person, having had probable cause to suspect that such cart,

&c. had smuggled goods contained therein, shall not be liable to any prosecution or action. All persons conducting such cart, &c. refusing to stop when required so to do in the king's name, are liable to a penalty of 100*l.* (1).

Police Officers seizing Goods.—By *sect. 41*, if any goods liable to forfeiture shall be stopped by any police officer, they must be carried to the custom-house warehouse next to the place where the goods were stopped, and there delivered within forty-eight hours to the proper officer. But, by *sect. 42*, if any such goods shall be stopped on suspicion that the same have been stolen, the officer is then to carry them to the police office to which the offender is taken, there to remain until the trial of the offender; and in such case the officer is required to give notice in writing to the commissioners of the customs of his having so detained the goods, with the particulars of the same; and immediately after the trial, all such goods are to be conveyed and deposited in the custom-house warehouse, to be proceeded against according to law; and if the police officer shall neglect so to convey them, or to give such notice of having stopped them, he is liable to a penalty of 20*l.* (1).

Where a party makes his Escape.—By *sect. 52*, if any person liable to be detained shall not be detained at the time of his committing the offence for which he is so liable, or after detention shall make his escape, any such officer or person above mentioned may detain him at any time afterwards, and carry him before a justice, to be dealt with as if detained at the time of committing such offence.

5. Penalties for various Offences.

Mitigation of Penalties.—By *sect. 43*, the Lords of the Treasury, or the commissioners of customs or excise, may restore seizures, whether condemnation shall have taken place or not, upon such terms and conditions as they may deem expedient, and may also mitigate any penalties.

Penalty for unshipping or having in possession Uncustomed Goods.—By *sect. 44*, every person, who shall assist or be otherwise concerned in the unshipping of goods prohibited to be imported, or the duties for which have not been paid or secured; or who shall knowingly harbour, keep, or conceal, or knowingly permit or suffer to be harboured, &c. any goods which shall have been illegally un-

(1) See 4 & 5 Will. 4, c. 13, s. 4, *post*, p. 1189.

shipped without payment of duties, or which shall have been illegally removed without payment of the same from any warehouse or place of security in which they may have been deposited, or any goods prohibited to be imported or to be used or consumed; and every person, to whose possession any such uncustomed or prohibited goods shall knowingly come, or who shall assist or be in anywise concerned in the illegal removal of any goods as aforesaid; shall forfeit either the treble value thereof, or the penalty of 100*l.* (*n*), at the election of the commissioners of the customs.

How Value of Goods ascertained.]—By *sect. 45*, where any penalty is to be determined by the value of any goods, such value shall be deemed and taken to be according to the rate and price, which goods of the like sort or denomination, and of the best quality, bear at such time, and upon which the duties due upon importation have been paid.

Penalty on persons insuring Uncustomed Goods.]—By *sect. 46*, every person who, by way of insurance or otherwise, shall undertake to agree to deliver any goods to be imported without paying the duties due upon such importation, or any prohibited goods; or who, in pursuance of such insurance or otherwise, shall deliver or cause to be delivered any uncustomed goods; and every aider or abetter of such person; shall, for every such offence, forfeit the sum of 500*l.*, over and above any other penalty to which by law he may be liable. And every person who shall agree to pay any person for the insurance or conveyance of such goods, or shall receive or take such goods into his custody or possession, or suffer the same so to be received or taken, is liable to the same penalty.

Offering Goods for Sale, under pretence that they are prohibited.]—By *sect. 47*, if any person shall offer for sale any goods, under pretence that the same are prohibited, or have been unshipped and run on shore without payment of duties; all such goods, although not liable to duties or prohibited, shall be forfeited; and the person offering the same for sale is also liable to forfeit the treble value of such goods, or the penalty of 100*l.* (*n*), at the election of the commissioners of the customs.

Penalty on persons discovered to have been on board Vessels liable to Forfeiture.]—By *sect. 48*, every person being a British subject, who shall be found or discovered to have been on board any

(*n*) See 4 & 5 Will. 4, c. 13, s. 4, *post*, p. 1189.

vessel or boat, liable to forfeiture for being found or discovered to have been within any of the distances, ports or places before mentioned, having or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner, such goods or things as subject such vessel or boat to forfeiture; or who shall be found or discovered to have been, within any such distance as aforesaid, on board any vessel or boat, from which any part of the cargo shall have been thrown overboard or staved or destroyed to prevent seizure; shall forfeit the sum of 100*l.* (*p*). And every person, not being a British subject, who shall be found or discovered to have been on board any vessel so liable to forfeiture, within one league of the coast, or within any bay, harbour, river, or creek, is liable to the same penalty (*p*). Any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of customs or excise, or other person acting in his aid, or duly employed for the prevention of smuggling, may detain every such person and convey him before any justice of the peace, to be dealt with as after directed. But any such person proving to the satisfaction of the justice that he was only a passenger in such vessel or boat, and had no interest whatever therein, or in any goods on board the same, shall be forthwith discharged.

The term "*found*" in this section is equivalent in import to *having been seen or discovered*, and is not to be confined to a mere finding by officers or other persons seeking the party or the thing for the purpose of apprehension or seizure, or with intent to institute proceedings for the recovery of penalties or other hostile motive (*q*).

Penalty for unshipping or concealing Spirits or Tobacco.—By *sect. 49*, every person who shall unship, or be aiding, assisting or concerned in unshipping, any spirits or tobacco liable to forfeiture, or who shall carry, convey, or conceal, or be aiding or concerned in carrying, conveying or concealing, any such spirits or tobacco, shall forfeit 100*l.* (*r*). Every such person may be detained by any such officer or other person (as in *sect. 48*), and taken before any justice, to be dealt with as after directed.

But by 6 & 7 Will. 4, c. 60, s. 10, wherever any person shall have been detained and taken before any justice for the offence specified

(*p*) By 4 & 5 Will. 4, c. 13, s. 1, the pecuniary penalty for this offence is abolished, and by *sect. 2*, a different punishment substituted. See *post*, p. 1187.

(*q*) *Att. Gen. v. Delano*, 6 Pri. 383.

(*r*) See 4 & 5 Will. 4, c. 13, ss. 1 and 2, *post*, p. 1187.

Quære, whether the above penalty is abolished by that act.

in the last section, and it shall appear to such justice that the quantity of spirits in respect of which such person has been so detained, does not exceed one gallon, or that the quantity of tobacco does not exceed six pounds weight, the justice may proceed summarily upon the case without any information, although no direction shall have been given by the commissioners of the customs, and may convict such person of such offence, and adjudge, that, in lieu of any other penalty, he shall forfeit not exceeding 5*l.*, and in default of payment be committed to any gaol not exceeding one month.

Unshipping Tea, or manufactured Silk.—By 3 & 4 Will. 4, c. 53, s. 50, every person who shall unship, or be aiding or concerned in unshipping, any tea, or foreign manufactured silk, of the value of 20*l.*, liable to forfeiture; or who shall carry, convey, or conceal, or be aiding or concerned in carrying, conveying or concealing such tea or silk; shall forfeit (s) treble the value thereof, and may be detained by any officer or person above mentioned, and taken before any justice, to be dealt with as after directed. But the party so detained may give security in treble the amount of the goods seized, by recognizance or otherwise, to the satisfaction of the justice, to appear at a time and place appointed, and no such person shall be liable to serve in the navy.

Making Signals to smuggling Vessels.—By sect. 53, no person shall, after sunset and before sunrise between the 21st of September and the 1st of April, or after the hour of eight in the evening and before six in the morning at any other time in the year, make, or aid or assist in making, any signal in or on board or from any vessel or boat, or on or from any part of the coast or shore, or within six miles of any part of the coast or shore, for the purpose of giving notice to any person on board any smuggling vessel or boat, whether he be, or be not, within distance to notice any such signal; under the penalty of being guilty of a *Misdemeanor*. Any person may stop, arrest, and detain such offender, and convey him before any justice residing near the place where such offence shall be committed, who may commit him to the next county gaol, there to remain until the next assizes, or until he shall be delivered by due course of law. It is declared to be unnecessary to prove on any indictment, that any vessel or boat was actually on the coast. The offender, on conviction, is liable either to a penalty of 100*l.*, or to imprisonment to hard

(s) See 4 & 5 Will. 4, c. 13, ss. 1 and 2, *post*, p. 1187. And *quære*, whether the above forfeiture is abolished by that act.

labour not exceeding one year. And by *sect. 54*, proof that such signal was not made with such intent and for such purpose, shall be upon the defendant. By *sect. 55*, any person may prevent any such signal being made, and enter and go into and upon any lands for that purpose.

Penalty on persons resisting Officers, &c.—By *sect. 56*, if any person shall obstruct any such officer or person above mentioned, duly employed for the prevention of smuggling, in the execution of his duty, or in the due seizing of any goods liable to forfeiture; or shall rescue, or cause to be rescued, any goods which have been seized, or shall attempt or endeavour to do so; or shall before or after any seizure stave, break, or otherwise destroy any goods, to prevent the seizure thereof, or the securing the same; the offender is liable to a penalty of 100*l*. But by 4 & 5 Will. 4, c. 13, ss. 1 and 2, this penalty is abolished, and a different punishment substituted (*t*).

Procuring other persons to assemble.—By *sect. 57*, any person, who shall by any means procure or hire any persons to assemble for the purpose of being concerned in the landing, or shipping, or carrying, or conveying, any goods which are prohibited to be imported, or the duties for which have not been paid or secured, shall, for every person so procured or hired, forfeit 100*l*. But by 4 & 5 Will. 4, c. 13, ss. 1 and 2, this forfeiture is abolished, and a different punishment substituted (*t*).

6. *Felonies and transportable Offences.*

Three or more armed persons assembled to assist in the illegal landing of Goods, &c.—By 3 & 4 Will. 4, c. 53, s. 58, if any persons to the number of three, or more, armed with firearms, or other offensive weapons, shall, within the United Kingdom, or within the limits of any port, harbour, or creek thereof, be assembled in order to be aiding and assisting in the illegal landing, running, or carrying away of any prohibited goods, or any goods liable to any duties which have not been paid or secured, or in rescuing or taking away any such goods after seizure from the officer of customs or other officer authorized to seize the same, or from any person employed by them or assisting them, or from the place where the same shall have been lodged by them, or in rescuing any person apprehended for any offence made felony by any act relating to the customs, or in preventing the

(*t*) See *post*, p. 1187.

apprehension of any person who shall have been guilty of such offence ; or in case any persons, to the number of three or more, so armed as aforesaid, shall be so aiding or assisting ; the offenders were declared to be guilty of a *capital Felony*, but which now, by 7 Will. 4 & 1 Vict. c. 91, is only punishable with *Transportation for life, or not less than fifteen years, or Imprisonment not exceeding three years, with or without hard labour and solitary confinement.*

Maliciously shooting at any Vessel of the Navy or Revenue.—By sect. 59, if any person shall maliciously shoot at any vessel or boat belonging to his Majesty's navy, or in the service of the revenue, within one hundred leagues of the coast of the United Kingdom ; or shall *maliciously* (u) shoot at, maim, or dangerously wound any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of customs or excise, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the due execution of his office or duty ; every person so offending, and every person aiding, abetting, or assisting therein, is declared to be guilty of a *capital Felony*, but which, by 7 Will. 4 & 1 Vict. c. 91, is now only punishable as above.

Any person in Company with more than four others having prohibited Goods, &c.—By sect. 60, if any person, being in company with more than four other persons, be found with any goods liable to forfeiture under any act relating to the revenue of customs or excise,—or in company with one other person, within five miles of the sea coast or of any navigable river leading therefrom, with such goods, and carrying offensive arms or weapons, or disguised in any way ; every such person shall be adjudged guilty of *Felony*, and be transported for seven years.

Assaulting Officers by Force or Violence.—By sect. 61, if any person shall, by force, or violence, assault, resist, oppose, molest, hinder, or obstruct any such officer, or person as above mentioned, being duly employed for the prevention of smuggling, in the due execution of his office or duty ; he is liable to be transported for seven years, or imprisoned and kept to hard labour not exceeding three years.

(u) If a Custom House vessel chase a smuggler, and fire into her without hoisting the proper pendant and ensign required by the 8th section of the act, the returning

the fire will not be considered as a *malicious* shooting, within the above section ; *R. v. Reynolds*, Russ. & Ry. 465, and see *ante*, p. 1167.

7. Jurisdiction of Justices, and Proceedings on summary Conviction.

How Penalties recoverable.—By 3 & 4 Will. 4, c. 53, s. 75, all penalties and forfeitures incurred or imposed by that or any other act relating to the customs, or to trade or navigation, may be sued for, either by action of debt in the superior courts at Westminster, in the name of the attorney-general, or of some officer of his Majesty's customs, or by information *before any two justices of the peace*. And by 4 & 5 Will. 4, c. 51, s. 28, any penalty or forfeiture incurred under any act relating to the customs may be sued for and recovered by order of the commissioners of excise, and in the name of an officer of excise, as well as by order of the commissioners of customs. And where any election or option is given by any act to the commissioners of customs, which of two penalties shall be sued for, such election or option may be exercised by the commissioners of excise, and may be averred in the information to have been made by such last mentioned commissioners.

When a Justice of any adjoining County may act.—By sect. 89, where the attendance of two magistrates having jurisdiction in the county where the offence is committed cannot be conveniently obtained, a magistrate of any adjoining county, with one magistrate of the county in which the offence was committed, may hear and determine any information, and have the same powers and authorities as if they were both magistrates for the county in which the offence was committed.

Offences committed in Towns Corporate.—By sect. 88, where any offence is committed in any city, borough, liberty, division, franchise, or town corporate, as well any justices of the city, &c., as any justices of the county in which the city, &c. is situated, shall have jurisdiction to hear and determine the same.

What Justices disqualified.—But by sect. 115, no justice of the peace, who is a collector or comptroller, or otherwise connected with the collection of the customs or excise, shall take cognizance of any matter relating to the summary conviction of persons offending against any act relating to the customs.

Venue.—By sect. 77, in case any offence shall be committed upon the high seas against any act relating to the customs, or any penalty or forfeiture shall be there incurred for any breach of such act, such offence shall, for the purpose of prosecution, be deemed and taken

to have been committed, and such penalties and forfeitures to have been incurred, at the place on land into which the person committing such offence, or incurring such penalty, shall be taken, brought, or carried (x), or in which such person shall be found. And in case such place on land is situated within any city, borough, liberty, division, franchise, or town corporate, as well any justice of the peace for such city, &c., as any justice of the peace of the county within which such city, &c. is situated, shall have jurisdiction to hear and determine such offence. And where any offence shall be committed in any place upon the water, not being within any county, or where any doubt exists as to the same being within any county; such offence shall, for the purposes of the act, be deemed and taken to be an offence committed upon the high seas.

Service of Summons.—By *sect. 78*, upon exhibiting any information before any justice of the peace for any offence against any act relating to the customs, or to trade or navigation, for which offence the party charged is not liable to be detained, the justice is required to issue a summons for his appearance before two justices of the peace, and such summons directed to such party, being left either at his or her last known place of residence, or on board any ship or vessel to which such party may belong, shall be deemed to have been sufficiently served.

Conviction and Commitment on proceeding by Summons.—By *sect. 79*, upon the appearance or default of any party so summoned, any two justices may proceed to the examination of the matter contained in the information, and upon the proof thereof, by the oath of one credible witness, the party may be convicted. In case of non-payment of any penalty, one justice may, by warrant under hand and seal, commit the party to any gaol within his jurisdiction, there to remain until the penalty shall be paid. And by *sect. 80*, the warrant may be executed in any part of the United Kingdom.

Mitigation of Penalties.—By *sect. 81*, when any party shall be so convicted (except as is thereafter provided), the justices may mitigate the payment of any penalty, so as the sum to be paid by the party be not less than one-fourth of the amount of the penalty. This power of mitigation, however, is rendered wholly nugatory,

(x) Although the seizure of a vessel or goods may be in a place different from that to which the offender is conveyed, yet the justices of the place on land to

which he is taken, brought, or carried, have jurisdiction to try the offence. *Re Nunn*, 8 B. & C. 644.

whenever an offender is detained, in the first instance, by any officer employed for the prevention of smuggling. See *infra*, sects. 51 and 85. And by 4 & 5 Will. 4, c. 13, s. 8 (y), it can only be exercised where the offender is convicted of a *first* offence.

When Offenders to be discharged from Imprisonment.—By sect. 82, where any person shall have been committed for non-payment of any penalty less than 100*l.*, the gaoler or keeper of the prison is required to discharge such person at the end of six calendar months from the commencement of such imprisonment.

Married Women.—By sect. 83, where any party convicted is a married woman, she is liable to be committed to prison, notwithstanding her coverture.

Mode of Proceeding for Forfeiture of Goods.—By sect. 84, where any information is exhibited for the forfeiture of any goods, the justice is required to summon the party to whom such goods may belong, or from whom they were seized, to appear before any *two justices*; and such summons directed to such party, being left at his last known place of residence, or on board any ship to which he may belong, shall be deemed to have been sufficiently served. Upon his appearance, or default, any two justices may proceed to the examination of the matter, and upon due proof that the goods are liable to forfeiture under any act relating to the customs, may condemn the goods.

Detention and Conviction of Offenders.—By sect. 51, where any person is detained by any officer employed for the prevention of smuggling for any offence against the customs, and is taken before a justice, if it shall appear to the justice that there is a reasonable cause to detain him, the justice may order him to be detained a reasonable time (for the purpose of preparing any information, conviction, or warrant of commitment), and at the expiration of such time to be brought before two justices, who are authorized finally to hear and determine the matter.

Penalty on being detained for any Offence.—By sect. 85, every person liable to be detained, and who shall have been thus detained, for any offence relating to the customs, and who shall be brought before two justices, may be convicted, on proof of the offence by the oath

of one witness ; and shall immediately upon such conviction pay into the hands of such justices, for the use of his Majesty, the penalty of 100*l.* (z), without any mitigation whatever ; or, in default thereof, the justices may imprison him until such penalty shall be paid. And if he be a seafaring man, then the justices might order him to be taken on board any of the King's ships, to serve in the navy for five years ; but this last provision is repealed by the 4 & 5 Will. 4, c. 13, s. 1 (a).

Evidence as to payment of Duties.—By 3 & 4 Will. 4, c. 53, s. 114, if any goods shall be seized for non-payment of duties, or any other cause of forfeiture, and any dispute shall arise whether the customs, excise, or inland duties shall have been paid for the same, or the same have been lawfully imported, or concerning the place from whence such goods were brought ; in such case the proof thereof shall be on the owner or claimer of such goods, and not on the officer who shall seize and stop the same.

Certain averments sufficient, unless the contrary proved.—By sect. 116, the averment in the information that the commissioners of the customs or excise have directed or elected such information or proceedings to be instituted, or that any vessel is foreign, or belonging wholly or in part to his Majesty's subjects, or that any person detained or found on board any vessel or boat liable to seizure, is or is not, a subject of his Majesty, or that any person is an officer of the customs,—and where the offence is committed in any port in the United Kingdom, the naming of such port in any information or proceeding,—shall be sufficient, without proof as to such fact or facts, unless the defendant in such case shall prove to the contrary.

By sect. 117, all persons employed for the prevention of smuggling, under the direction of the commissioners of the customs, or of any officer in the service of the customs, shall be deemed and taken to be duly employed for the prevention of smuggling ; and the averment in any information or suit that such person was so duly employed shall be sufficient proof thereof, unless the defendant shall prove the contrary.

Proof as to Officers, and their Competence as Witnesses.—By sect. 118, if upon any trial a question shall arise, whether any person is an officer of the army, navy, or marines, being duly employed

(z) But see 4 & 5 Will. 4, c. 13, ss. 1, 2, 4 ; *post*, pages, 1187, 1189. (a) See *post*, page 1187.

for the prevention of smuggling, and on full pay, or an officer of the customs or excise, evidence of his having acted as such shall be deemed sufficient; and such person shall not be required to produce his commission or deputation, unless sufficient proof shall be given to the contrary. And every such officer; and any person acting in his aid or assistance, shall be deemed a competent witness, upon the trial of any suit or information on account of any seizure or penalty, notwithstanding he may be entitled to the whole, or any part, of such seizure or penalty, or to any reward upon the conviction of the party.

Proof of an Order of the Commissioners.—By sect. 119, upon any judicial hearing or investigation, touching any penalty or forfeiture under any law relating to the customs or excise, or to the law of navigation, where it may be necessary to give proof of any order issued by the commissioners of customs or excise, the letter or instructions which shall have been officially received by the officer of customs or excise (at the place or district where such penalty or forfeiture shall have been incurred) for his government, and in which such order is mentioned or referred to, and under which instructions he shall have acted as such officer, shall be admitted and taken as sufficient evidence and proof of such order.

Application of Penalties and Forfeitures.—By sect. 94, all penalties and forfeitures, which may be recovered on any prosecution by order of the commissioners of customs, shall be paid to them, and on any prosecution by order of the commissioners of excise, to the last named commissioners, or to the persons appointed by them respectively to receive the same, to be applied in such manner as the law directs.

Removal of Proceedings.—By sect. 90, no writ of *certiorari* shall issue to remove any proceedings before any justice of the peace, under any act for the prevention of smuggling, or relating to the customs; nor shall any writ of *habeas corpus* issue to bring up the body of any person who shall have been convicted before any justice under any such act; unless the party against whom such proceeding shall have been directed, or shall have been so convicted, or his attorney or agent, shall state in an affidavit the grounds of objection to such proceedings or conviction. And upon the return of such writ of *certiorari* or *habeas corpus*, no objection shall be taken or considered, other than such as shall have been stated in such affidavit. The justices of the peace may amend any information,

conviction, or warrant of commitment, for any offence under any such act, at any time whether before or after conviction.

Time for prosecution of Offences.—By *sect. 120*, all informations exhibited for any offence against any act relating to the customs, may be exhibited before one justice, within six months next after the date of the offence committed. But by *sect. 121*, where any person shall have been detained for any offence, and shall have made his escape from custody, an information may then be exhibited against him at any time afterwards, although more than six months have expired.

Form of Proceedings.—By *sect. 91*, all informations before justices of the peace, for any offences committed against any act relating to the customs, and all convictions for such offences, and warrants of justices founded upon such convictions, shall be drawn respectively in the form, or to the effect, in the schedule. And by *sect. 92*, every information for any penalty or forfeiture, and every conviction, or warrant of commitment for any penalty, shall be deemed valid and sufficient, in which the offence for which such penalty shall have been inflicted, or the cause of such forfeiture, is set forth in the words of the act.

1. *Form of Information under the above Act, where the party charged is a British Subject, and a pecuniary Penalty is inflicted.*

County of —, } Be it remembered, that on the — day of —, in the year of
to wit. } our Lord 1843, A. B., officer of customs, who is directed by the
commissioners of her Majesty's customs to prefer this information, gives us, J. P. and
W. P., esquires, two of her Majesty's justices of the peace in and for the said county,
to understand and be informed that C. D., being a subject of her Majesty, on the —
day of —, in the year of our Lord 1843, [*here state the offence,*] contrary to the
form of the statute in that case made and provided; whereby the said C. D. hath forfeited the sum of — pounds.

2. *Form of a Conviction for an Offence, where a pecuniary Penalty is inflicted upon the Offender, being a British Subject.*

County of —, } Be it remembered, that on the — day of —, in the year of
to wit. } Lord 1843, an information was exhibited by A. B., officer of
customs, before us, J. P. and W. P., esquires, two of her Majesty's justices of the
peace in and for the said county, against C. D.; which said information charged that
the said C. D., on the — day of —, in the year of our Lord 1843, [*here state the
offence as in the information,*] contrary to the form of the statute, which offence has
been duly proved before us, the said justices: We do therefore convict the said C. D. of

the said offence, and do adjudge that the said C. D. hath forfeited for his said offence the sum of — pounds. Given under our hands and seals, the — day of —.

[In cases where magistrates exercise the power of mitigation add these words, "which said sum of £— we the said justices do hereby mitigate to the sum of £—."]

3. Form of Warrant of Commitment to Gaol for a Penalty.

County of —, } To A. B., officer of customs, and to E. F., the gaoler or keeper
to wit. } of the — at — in the said county.

Whereas C. D. has been duly convicted before us, J. P. and W. P., esquires, two of her Majesty's justices of the peace in and for the said county, of having [*state the offence as in the information*]; and whereas we, the said justices, did adjudge that the said C. D. hath forfeited for his said offence the sum of £—, (which sum of £— we, the said justices, did mitigate to the sum of £—,) and which said sum of £— has not been paid: These are therefore to require you, the said A. B., forthwith to take, carry, and convey the said C. D. to the — at — in the said county, and to deliver him into the custody of the gaoler or keeper of the said —; and we, the said justices, do hereby authorize and require you the said E. F., the gaoler or keeper of the said —, to receive and take the said C. D. into your custody, and him safely to keep, until he shall duly pay the said sum of £—. Given under our hands and seals, at — in the county of —, this — day of —, in the year of our Lord 1843.

4. Form of Information, where the party charged is not a British Subject.

County of —, } Be it remembered, that on the — day of —, in the year of
to wit. } our Lord 1843, A. B., officer of customs, who is directed by the commissioners of her Majesty's customs to prefer this information, gives us, J. P. and W. P., esquires, two of her Majesty's justices of the peace in and for the said county, to understand and be informed that C. D., not being a subject of her Majesty, on the — day of —, in the year of our Lord 1843, [*here state the offence, setting forth that the same took place within one league of the coast of this kingdom,*] contrary to the form of the statute in that case made and provided, whereby the said A. B. hath forfeited the sum of £—.

5. Form of Conviction, where the person charged is not a British Subject.

County of —, } Be it remembered, that on the — day of —, in the year of
to wit. } our Lord 1843, an information was exhibited by A. B., an officer of the customs, before us, J. P. and W. P., esquires, two of her Majesty's justices of the peace in and for the said county, against C. D., which said information charged that the said C. D., on the — day of —, in the year of our Lord 1843, [*here state the offence as in the information, setting forth that the same took place within one league of the coast of this kingdom,*] contrary to the form of the statute; which offence has been duly proved before us, the said justices: We do therefore convict the said C. D. of the said offence, and do adjudge that the said C. D. hath forfeited for his said offence the sum of £—. Given under our hands and seals, this — day of —, in the year of our Lord 1843.

6. *Form of Warrant of Commitment to Gaol of a person not being a British Subject.*

County of —,) To A. B., officer of customs, and to E. F., the gaoler or keeper
to wit.) of the — at — in the said county.

Whereas C. D., not being a subject of her Majesty, has been duly convicted before us, J. P. and W. P., esquires, two of her Majesty's justices of the peace in and for the said county, of having [*here state the offence as in the information*]: And whereas we, the said justices, did adjudge that the said C. D. had forfeited for his said offence the sum of £—, which said sum of £— has not been paid: These are therefore to require you, the said A. B., forthwith to take, carry, and convey the said C. D. to the — at — in the said county, and to deliver him into the custody of the gaoler or keeper of the said —; and we, the said justices, do hereby authorize and require you, the said E. F., the gaoler or keeper of the said —, to receive and take the said C. D. into your custody and him safely to keep until he shall duly pay the said sum of £—. Given under our hands and seals, at — in the county of —, this — day of —, in the year of our Lord 1843.

By 4 & 5 Will. 4, c. 13, s. 1, so much of the 3 & 4 Will. 4, c. 53, as authorizes and requires justices of the peace to order persons convicted of certain offences therein mentioned to be carried or conveyed on board any of her Majesty's ships, in order to *serve in the navy* for the term of five years, and so much of the said act as imposes certain *pecuniary penalties* for any of the following offences, is repealed.

Persons unlawfully found on board Vessels, running Spirits, &c., procuring others unlawfully to assemble, or obstructing Officers.]— By sect. 2, every person, being a British subject, who shall be found or discovered to have been on board any vessel or boat liable to forfeiture under the 3 & 4 Will. 4, c. 53, or any other act relating to the customs, for being found or discovered to have been within any of the distances in that act mentioned from the United Kingdom, or from the Isle of Man, having on board or in any manner attached thereto, or having had on board or in any manner attached thereto, or conveying or having conveyed in any manner, such goods or things as subject such vessel or boat to forfeiture; or who shall be found or discovered to have been within any such distances as aforesaid on board any vessel or boat, from which any part of the cargo or lading shall have been thrown overboard, or staved, or destroyed, to prevent seizure; and every person, not being a British subject, who shall be found or discovered to have been on board any vessel or boat liable to forfeiture for any of the causes aforesaid, within one league of the United Kingdom, or of the Isle of Man; and all persons who are assembled to the number of three, or more, for the purpose of unshipping, carrying, conveying, or concealing any spirits or tobacco,

or any tea or silk (such tea or silk being of the value of 20*l.* or more) liable to forfeiture under any act relating to the customs or excise; and every person who shall by any means procure or hire, or shall depute or authorize any other to procure or hire, any persons to assemble for the purpose of being concerned in the landing, or unshipping, or carrying, or conveying any goods which are prohibited to be imported, or the duties of which have not been paid or secured; and every person who shall obstruct any officer of the army, navy, or marines, being duly employed for the prevention of smuggling, and on full pay, or any officer of customs or excise, or any person acting in his aid or assistance, or duly employed for the prevention of smuggling, in the execution of his duty, or in the due seizing of any goods liable to forfeiture by the said act or any other act relating to the customs; or who shall rescue, or cause to be rescued, any goods which have been duly seized, or who shall attempt or endeavour to do so; or shall before, or at or after, any seizure, stave, break, or otherwise destroy any goods, to prevent the seizure thereof, or the securing the same; shall, upon being duly convicted of any of the said offences before any two justices of the peace, be adjudged, for the first offence, to be imprisoned in any house of correction and there kept to hard labour for any term not less than six, nor greater than nine, calendar months; and for the second offence, for any term not less than nine, nor greater than twelve, calendar months; and for the third or any subsequent offence, for twelve calendar months. By 6 & 7 Will. 4, c. 60, s. 9, if there is no house of correction, then the offender may be committed to any gaol within the jurisdiction of the justices wherein the sentence of hard labour can be executed, or to the house of correction nearest to the place where the offender is convicted.

Commitment by Justices of limited jurisdiction.—By sect. 3, where any person shall have been convicted of any offence against this or any other act relating to the customs, for which offence such person shall be liable to be committed to hard labour, and such conviction shall take place before any justices for any city, borough, liberty, division, franchise, or town corporate, not having any house of correction situate within the same, they may, by warrant under their hands and seals, commit the offender to any house of correction near to the place where such offender is convicted to hard labour, for such time as is thereinbefore provided for a first, second, and third offence respectively.

Justices may order Imprisonment with Hard Labour, in default of payment of penalty.]—By *sect. 4*, where any person shall have been convicted before any two justices of any offence, not being one of those thereinbefore mentioned, and for which any penalty shall have been inflicted by the 3 & 4 Will. 4, c. 53, or any other act relating to the customs, the justices may order and adjudge that such person shall, in default of paying the penalty, be imprisoned, for the first of such offences, in any gaol within their jurisdiction for not less than six, nor more than nine, calendar months; and if such party shall have been before convicted of any offence against any act relating to the customs, to be imprisoned in any house of correction, and there kept to hard labour, for not less than six, nor more than twelve, calendar months.

When Justices may commute the sentence of Hard Labour.]—By *sect. 5*, where any person shall have been convicted of any such offence, for which such person would be liable to be committed to hard labour, the justices may, if such person is a female, or it appears to them that such person is from age or sickness incapable of hard labour, order and adjudge that such person shall, in lieu of being committed to hard labour, be imprisoned only; provided that the cause of mitigation shall be stated in the warrant of commitment.

Where an Offender, after commitment, is found to have been previously convicted.]—By *sect. 6*, where any person convicted of an offence relating to the customs, for which he is liable to be committed to hard labour, and it shall at any time during such imprisonment be made to appear to any two justices, in the presence of such person, that such person had been before convicted of any such offence, the justices are required to commit such offender to some house of correction, to be kept to hard labour, for not less than nine, and not more than twelve, calendar months from the date of the first commitment, and to amend the first warrant of commitment accordingly. And (by *sect. 7*) it is not necessary in such amended warrant of commitment to state or refer to the former conviction.

Power of mitigation limited.]—By *sect. 8*, the power of mitigation of penalties given to justices by the former act is to be exercised only where the offender is convicted of a *first* offence.

The Treasury or Commissioners of Customs may release Prisoners.]—By *sect. 9*, the commissioners of the treasury, or the customs, by any order made for that purpose under their hands, may release

from confinement any person committed under that act, on such terms and conditions as to them respectively shall appear to be proper.

Forms of Proceedings.]—By *sect. 10*, all informations before justices of the peace for any offences committed against that act, and all convictions for such offences, and warrants of justices founded upon such convictions, shall be drawn respectively in the form, or to the effect, in the schedule to the act.

Penalty for hoisting a King's Flag.]—By *sect. 11*, after reciting that King George the Third, by his royal proclamation, bearing date the 1st January, 1801, was pleased, with the advice of his privy council, to order and appoint what ensign or colours should be borne at sea by merchant ships or vessels belonging to any of his Majesty's subjects, thereby charging and commanding them that they should not presume to wear in any of their ships or vessels his Majesty's Jack, commonly called the Union Jack, nor any pendants, nor any such colours as are usually worn by his Majesty's ships, without particular warrant for their so doing from his Majesty, or the Lords of the Admiralty, nor any flags, jacks, pendants, or colours made in imitation of or resembling those of his Majesty, or any kind of pendant whatsoever, or any other ensign than the ensign described in the margin of the said proclamation; and reciting the former penalty of 50*l.*, imposed by the 3 & 4 Will. 4, c. 53, s. 9 (*b*); and that it was expedient that all doubts as to the law on this subject should be removed, and that further provisions should be made for carrying the said proclamation into effect; it is declared to be unlawful for any of his Majesty's subjects whomsoever to hoist, carry, or wear, in or on board any ship, vessel, or fishing boat, or any other vessel or boat whatsoever, whether merchant or otherwise, belonging to any of his Majesty's subjects, his Majesty's Jack, commonly called the Union Jack, or any pendant, or any such colours as are usually worn by his Majesty's ships, or any flag, jack, pendant, or colours whatsoever made in imitation of or resembling those of his Majesty, or any kind of pendant whatsoever, or any ensign or colours whatsoever, other than those prescribed by the said proclamation, under a penalty not exceeding 500*l.*, imposed on the master or other person having charge of such vessel or boat, or the owner thereof being on board the same, and every other person so offending, to be recovered, with costs, in the Court of Admiralty, or any Vice-Admiralty Court in the colonies, or in the

Court of Queen's Bench, or Exchequer, at the suit of the attorney-general. And any officer of the navy or marines, or any officer of the customs or excise, may enter on board any vessel or boat, so offending, and seize and take away the prohibited flag; which shall thereupon become forfeited.

1. Form of Information under the last Act.

County of —, } Be it remembered, that on the — day of —, in the year of
to wit, } our Lord 1843, A. B., officer of customs, gives us, J. P. and
W. P., esquires, two of her Majesty's justices of the peace in and for the said county,
to understand and be informed, that C. D., on the — day of —, in the year of
our Lord 1843 [*here state the offence, as in the act of parliament*], contrary to the form
of the statute in that case made and provided.

2. Form of Conviction.

County of —, } Be it remembered, that on the — day of —, in the year of
to wit, } our Lord 1843, an information was exhibited by A. B., officer of
customs, before us, J. P. and W. P., esquires, two of her Majesty's justices of the
peace in and for the said county, against C. D., which said information charged that
the said C. D., on the — day of —, in the year of our Lord 1843 [*here
state the offence as in the information*], contrary to the form of the statute; which
offence has been duly proved before us, the said justices [*or "the party has confessed
himself to be guilty of," as the case may be*]: We do therefore convict the said C. D.
of the said offence, and do adjudge that the said C. D. [*here insert the adjudication of
the justices*]. Given under our hands and seals, the — day of —.

3. Form of Warrant of Commitment.

County of —, } To A. B., officer of customs, and to E. F., the gaoler or keeper
to wit, } of the — at — in the said county.

Whereas C. D. has been duly convicted before us, J. P. and W. P., esquires, two
of her Majesty's justices of the peace in and for the said county, of having [*state the
offence as in the information*]: And whereas we, the said justices, did adjudge that the
said C. D. should for his said offence [*here state the adjudication as in the conviction*]:
These are therefore to require you, the said A. B., forthwith to take, carry, and convey
the said C. D. to the — at — in the said county, and deliver him into the custody
of the gaoler or keeper of the said —; and we, the said justices, do hereby autho-
rize and require you, the said E. F., the gaoler or keeper of the said —, to receive
and take the said C. D. into your custody, and to [*insert the punishment according to
the conviction*]. Given under our hands and seals, at —, the — day of —.

Sodomy.

BY 9 Geo. 4, c. 31, s. 15, every person convicted of the abominable
crime of buggery, committed either with mankind, or with any
animal, *shall suffer death as a felon.*

An assault, with intent to commit the crime, subjects the offender, by the 25th section of the same statute, to an indictment for a misdemeanour, and to be imprisoned for two years to hard labour, with a fine at the discretion of the Court, and to find sureties for good behaviour. The mere solicitation also to commit the crime, is in itself an indictable offence, without any overt act of an attempt to commit it.

And see further 2 Deac. Crim. Law, 1235.

Soldiers.

FOR fraudulently personating soldiers to receive their pay, &c. see **False Personation**.

For the forgery of documents relating to their pay, pensions, &c. see **Forgery**.

For the examination of soldiers, as to their settlements, see **Poor**—(*Removal*), *ante*, p. 930.

And see **Militia**.

Seducing them from their Duty.]—By 37 Geo. 3, c. 70 (made perpetual by 57 Geo. 3, c. 7), any person, who shall maliciously and advisedly endeavour to seduce any person serving in his Majesty's forces, by sea, or land, from his duty and allegiance to his Majesty, or to incite or stir him up to commit any act of mutiny, or to make, or endeavour to make, any mutinous assembly, or to commit any traitorous or mutinous practice whatever, is declared to be guilty of *Felony, punishable with death*.

How protected, when discharged from Service.]—By 43 Geo. 3, c. 61, s. 1, every soldier or marine duly discharged out of any regiment, and every sailor duly discharged from the navy, upon carrying his discharge to the mayor or chief magistrate of the nearest town, may receive a certificate stating the place to which he is desirous of going, being his home or last legal settlement, together with the time to be fixed, not exceeding ten days for every 100 miles. And such person, producing such discharge and certificate when lawfully demanded, and being in his proper route, shall not, by asking relief, be deemed a rogue and vagabond.

Protection of his Wife.]—And by *sect. 2*, the wife of any soldier ordered for foreign service, making due proof of her not being permitted to embark with her husband, may receive a like certificate, which will entitle her also to relief on her route home, without being deemed a rogue and vagabond.

The power and duty of a magistrate, in regard to *soldiers* in general, are regulated by the Annual Mutiny Acts, the last of which, given at *full length* in the edition of the Statutes, is the 1 Will. 4, c. 15. This has been slightly varied and added to by the subsequent acts; but they are all much the same in their general provisions. The magistrate's jurisdiction, as now existing under these acts, is as follows:—

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| 1. <i>Regulations and Offences connected with Enlistment and Recruiting.</i> | 5. <i>Purchasing Soldiers' Necessaries, &c.</i> |
| 2. <i>With Musters.</i> | 6. <i>Attestation of Accounts.</i> |
| 3. <i>With Billeting, and supplying Carriages</i> | 7. <i>Penalty for killing Game.</i> |
| 4. <i>Offences connected with Desertion.</i> | 8. <i>Licensing of Canteens.</i> |
| | 9. <i>Recovery and Application of Penalties.</i> |

1. *Regulations and Offences connected with Enlistment.*

Enlisting and Swearing of Recruits.—By 5 & 6 Vict. c. 12, s. 36, every person who shall receive enlisting money, knowing it to be such, from any person employed in the recruiting service, he being an officer, non-commissioned officer, or an attested soldier, shall be deemed to be enlisted as a soldier in her Majesty's service, and while he shall remain with the recruiting party shall be entitled to be billeted. Every person who shall enlist any recruit, shall first ask the person offering to enlist, whether he does, or does not, belong to the militia, and shall within twelve hours after the receipt of the enlisting money, cause to be taken down in writing, the name and place of abode of such recruit, and (if such recruit shall not reside in, or in the vicinity of, the town or place where he offered to enlist), the place also at which he shall declare that he intends to sleep, in order that within forty-eight, but not sooner than twenty-four hours (any intervening Sunday not included) after his having received the enlisting money, notice of his having so enlisted be given to the recruit, or left at his usual place of abode, or at the place where he stated that it was his intention to sleep. When any person shall be enlisted as a soldier in her Majesty's land service, he shall within four days, (any intervening Sunday not included), but not sooner than twenty-four hours after such enlisting, appear, together with some person employed in the recruiting service of the party with which he shall have enlisted, before a justice, or in *Scotland* before any baillie of a royal burgh, residing within the vicinity of the place, and acting for the division or district where such recruit shall have been enlisted, and not being an officer in the army; and if such recruit shall declare his having voluntarily enlisted, the justice shall put to him the several

questions contained in the schedule to the act, and shall then and there, and in the presence of the recruit, record or cause to be recorded in writing his answers thereunto; and the justice is required forthwith to read over, or cause his clerk in his presence to read over, to such recruit, the first and second articles of the second section of the Articles of War against mutiny and desertion, and to administer to such recruit the oath contained in the schedule to the act for limited or unlimited service, or for service in the forces of the East India Company, as may be applicable to the case of the recruit, and no other oaths; and the justice is required to give, under his hand, the certificate in the schedule to the act. If any such recruit so to be certified shall refuse to take the oath, the officer or non-commissioned officer with whom he enlisted, may detain and confine such person until he shall take the said oath of fidelity.

Dissent and relief from Enlistment.—By 6 Will. 4, c. 8, s. 35, any recruit appearing before a justice shall be at liberty to declare his dissent to such enlisting, and, upon such declaration and returning the enlisting money, and also paying the sum of twenty shillings for the charges expended upon him, together with the full amount of subsistence and beer money which shall have been paid to such recruit subsequent to the period of his having been enlisted, shall be forthwith discharged and set at liberty in the presence of such justice. But if such person shall refuse or neglect, within the space of twenty-four hours after so declaring his dissent, to return such money, he shall be deemed and taken to be enlisted as if he had given his assent thereto before the justice. Any justice may also discharge any person who shall have hastily enlisted, and who shall apply to him to declare his dissent within such four days as aforesaid, upon payment of the sum of money required to be paid by any recruit declaring his dissent, notwithstanding no person belonging to the recruiting party shall be with the recruit, if it shall appear to such justice upon proof to his satisfaction, that the recruiting party has left the place where such recruit was enlisted, or that the recruit could not procure any person belonging to such party to go with him before the justice; and the sum paid by such recruit upon his discharge shall be kept by the justice, and paid to any person belonging to the recruiting party entitled thereto demanding the same. No recruit who has been actually, though erroneously, discharged by the justice before the expiration of twenty-four hours after the time of the enlistment, shall be liable on that account to be proceeded

against as having deserted; and the justice who shall discharge any recruit shall in every case give a certificate thereof, signed with his hands, to the recruit, specifying the cause thereof.

Penalty on a Recruit absconding, making false declaration, &c.]
By 4 & 5 Vict. c. 2, s. 38, if any recruit shall receive the enlisting money from any person employed in the recruiting service, knowing it to be such, and shall abscond or refuse to go before such justice, or shall thereafter absent himself from the recruiting party or person with whom he enlisted, and shall not voluntarily return to go before some justice within such period of four days as aforesaid, such recruit shall be deemed to be enlisted and a soldier in her Majesty's service, as fully to all intents and purposes as if he had been duly attested, and may be apprehended and punished as a deserter, or absent without leave, under any articles of war made for punishment of mutiny and desertion; and such recruit shall not be discharged by such justice after the expiration of such four days, unless it shall be proved to the satisfaction of the justice, that the true name and residence of the recruit were disclosed and known to the recruiting party, and that no notice was given to the recruit, or left at his usual place of abode, of his having so enlisted. In every case where any recruit shall have received enlisting money, and shall have absconded from the party, so that it shall not be possible immediately to apprehend and bring him before a justice, the officer or non-commissioned officer commanding the party shall produce to the justice before whom the recruit ought regularly to have been brought for attestation, a certificate of the name and place of residence of such recruit; and the justice to whom such certificate shall be produced shall, after satisfying himself that the recruit who had absconded cannot be found and apprehended, transmit a duplicate thereof to the secretary at war, in order that, in the event of such recruit being afterwards apprehended and reported as a deserter, the facts of his having received enlisting money and having absconded after having been enlisted, may be ascertained, before he be finally adjudged to be a deserter. Any recruit who shall enlist, and be discovered to be incapable of active service, by reason of any infirmity concealed, or not declared by such recruit before the justice at the time of his attestation, may be transferred to any garrison, or veteran, or invalid battalion or company, or into her Majesty's marine forces, notwithstanding he shall have enlisted for any particular regiment, and shall be entitled to receive such proportion and residue of bounty, only, as her Majesty may allow in that behalf, instead of the bounty

upon which such man shall have been enlisted. Any two justices, before whom a recruit shall be brought, who shall be proved upon oath to having concealed his having been a soldier and discharged, or to have concealed his having been discharged upon any prior enlistment, or to have wilfully concealed any such infirmity upon being attested, or to have designedly made any false representation as aforesaid, may adjudge him to be a rogue and vagabond, and sentence him to such punishment as by any law in force may be inflicted upon rogues and vagabonds, and incorrigible rogues. Any recruit, who shall designedly make any false representation of any particular contained in the oaths and certificate in the schedule to the act, before the justice at the time of his attestation, and shall obtain any enlisting money or bounty for entering into her Majesty's service, or any other money, shall be guilty of obtaining money under false pretences, within the true intent and meaning of the 7 & 8 Geo. 4, c. 29 (c); and the production of such certificate, and proof of the handwriting of the justice giving such certificate, shall be sufficient evidence of such party having represented the several particulars contained in the oath sworn by him and specified in the certificate of the justice at the time of his being attested; and proof by the oath of one or more credible witnesses that the person so prosecuted hath voluntarily acknowledged that at the time of his enlistment he belonged to the militia, or to any regiment in her Majesty's service, or to her Majesty's ordnance, navy, or marines, shall be deemed and taken as evidence of the fact so by him acknowledged, without production of any roll or other document to prove the same; and such proof of such acknowledgment shall be certified to the secretary at war by the justice before whom such proof shall have been given. Any man having been enrolled to serve in the militia at the time of offering to enlist, who shall deny that he is a militiaman then actually enrolled and engaged to serve, or shall deny to the justice before whom he shall be attested that he belongs to the militia, shall, on conviction thereof before any one justice, either upon oath of one witness, or upon his own confession, or upon the production of the attestation and the before-mentioned acknowledgment of such person, certified by the secretary at war, or deputy-secretary at war, be committed to the common gaol or house of correction, for and during any time not exceeding six calendar months, over and above any penalty or punishment to which such person so offending may be otherwise liable; and shall, from the day on which his en-

gement to serve in the militia shall end, and not sooner, belong as a soldier to the corps of her Majesty's regular forces, or of the East India Company's forces, into which he shall have so enlisted. But every such person shall be liable to serve within the United Kingdom in any regiment, battalion, or corps of her Majesty's regular forces, or of the East India Company's forces, in which he has so enlisted, during all the time the militia to which he shall belong shall remain disembodied, or shall not be called out for training or exercise, and shall during all such time be subject to all the provisions of the mutiny act, and liable to be apprehended, and dealt with, and punished as a deserter from the corps in which he shall have so enlisted, if he shall neglect or refuse to join and serve in such corps as aforesaid.

Apprentices fraudulently enlisting.—By 6 Will. 4, c. 8, s. 40, any person duly bound as an apprentice, who shall enlist as a soldier in his Majesty's or the East India Company's service, and shall state to the magistrate, before whom he shall be carried and attested, that he is not an apprentice, shall be deemed guilty of obtaining money under false pretences, within the true intent and meaning of the 7 & 8 Geo. 4, c. 29 (*d*), and shall, after the expiration of his apprenticeship, whether he shall have been so convicted and punished, or not, be liable to serve as a soldier in any of his Majesty's regular forces, or in the forces of the East India Company, according to the terms of the enlistment; and if, on the expiration of his apprenticeship, he shall not deliver himself up to some officer authorized to receive recruits, he may be taken as a deserter to his Majesty's forces.

Claims of Masters to Apprentices.—By 7 Will. 4 & 1 Vict. c. 7, s. 41, no master shall be entitled to claim an apprentice, who shall enlist as a soldier in her Majesty's or the East India Company's service, unless he shall, within one calendar month after such apprentice shall have left his service, go before some justice, and take the oath mentioned in the schedule to the act annexed, and produce the certificate of such justice of his having taken such oath; which certificate the justice is required to give in the form in the schedule to the act annexed; and unless such apprentice shall have been bound, if in England, for the full term of seven years, not having been above the age of fourteen when so bound; nor unless such apprentice shall, when claimed by such master, be under twenty-one years of age.

But any master of an apprentice indentured for the sea service shall be entitled to claim and recover him in the form and manner above directed, notwithstanding such apprentice may have been bound for a less term than seven years. Any master, who shall give up the indentures of apprenticeship within one month after the enlisting of the apprentice, shall be entitled to receive to his own use so much of the bounty payable to such recruit, after deducting therefrom two guineas to provide him with necessaries, as shall have not been paid to such recruit before notice given of his being an apprentice.

Punishment of Apprentice enlisting.—By 6 Will. 4, c. 8, s. 42, no apprentice claimed by his master shall be taken from any corps or recruiting party, but under a warrant of a justice residing near, and within whose jurisdiction such apprentice shall then happen to be, before whom he shall be carried; and such justice shall inquire into the matter upon oath, and shall require the production and proof of the indenture, and that notice of the said warrant has been given to the commanding officer, and a copy thereof left with some officer or non-commissioned officer of the party, and that such person so enlisted declared that he was no apprentice; and such justice, if required by such officer or non-commissioned officer, shall commit the offender to the common gaol of the said place, and shall keep the indenture, to be produced when required, and shall bind over such person as he may think proper to give evidence against the offender, who shall be tried at the next, or at the sessions immediately succeeding the next, general or quarter sessions of the county, division or place, unless the Court shall on just cause put off the trial; and the production of the indenture, with the certificate of the justices that the same was proved, shall be sufficient evidence of the indenture. But any justice, not required as aforesaid to commit such apprentice, may deliver him to his master.

Penalty for unlawfully recruiting.—By 6 Will. 4, c. 8, s. 66, all persons (except such recruiting parties as may be stationed under military command) who shall cause to be advertised, posted, or dispersed bills for the purpose of procuring recruits or substitutes for the line, embodied militia, or East India Company's service, or shall open or keep any house, place of rendezvous, or office, or receive any person therein under such bill or advertisement, as connected with the recruiting service, or shall directly or indirectly interfere therewith, without permission in writing from the adjutant-general, or from the directors of the East India Company (as the case may be) shall forfeit for every such offence the sum of 20*l*.

Wages of a Servant enlisting.—By sect. 72, the justice before whom any recruit shall be attested, before the expiration of the term of service for which he had been hired by his master, may adjudge to such recruit a reasonable proportion of his wages for the time he has actually served, and make an order for the payment of the amount so awarded; and in case of neglect or refusal to pay the same within four days, he may issue his warrant for levying the same by distress and sale of the goods and chattels of the master.

2. *Offences connected with Muster.*

Penalty on false Musters.—By 6 Will. 4, c. 8, s. 43, musters shall be taken of every regiment, troop, or company in his Majesty's service, twice at least in every year, at such times as shall be appointed, and no soldier shall be absent from such musters, unless properly certificated to be employed on some other duty of the regiment, or to be sick, or in prison, or on furlough. Every person, who shall give, or procure to be given, any untrue certificate, whereby to excuse such soldier for his absence from any muster, or any other service which he ought to attend or perform, or shall make any false or untrue muster of man or horse, or shall wittingly or willingly allow or sign the muster-roll, wherein such false muster is contained, or any duplicate thereof; or who shall directly or indirectly take or cause to be taken any money or gratuity for mustering any soldiers, or for signing any muster-roll or duplicate thereof, or shall knowingly muster any person by a wrong name; upon proof thereof upon oath made by two witnesses before a court-martial shall for every such offence be forthwith cashiered, and shall be thereby utterly disabled to have or to hold any civil or military office or employment within the United Kingdom of Great Britain and Ireland or in his Majesty's service; and if the person giving such untrue certificate shall not have any military commission, he shall forfeit for every such offence the sum of 50*l.*; and any person who shall be falsely mustered, or offer himself to be mustered, or lend or furnish any horse to be falsely mustered, shall, upon oath made by two witnesses before some justice residing near the place where such muster shall be made, forfeit the sum of 20*l.*; and the informer, if he belongs to his Majesty's service, shall, if he demand it, be forthwith discharged.

Musters in and near Westminster.] — By sect. 44, forty-eight hours' notice shall be given to six justices, not being officers of the

army, residing within the city and liberty of Westminster and borough of Southwark, of the muster to be taken of his Majesty's forces quartered within such city and liberties and borough; and no officer shall proceed to take such musters, under a penalty of 50*l.*, except in the presence of two or more justices, who shall take cognizance of such muster, and sign the same, unless such justices shall neglect to attend; of which neglect, as well as of the proper notice being given to such justices, oath shall be made within forty-eight hours after such muster, before any justice. The officer appointed to take the half-yearly musters of any of his Majesty's forces, at any place ten miles distant from London, shall close the muster-rolls within twenty-four hours after the muster has been taken, and send a copy thereof within seven days to the secretary at war.

3. *Regulations and Offences connected with Billeting, and supplying Carriages.*

Who liable to the Billet.—By 6 Will. 4, c. 8, s. 51, the constables of parishes are required to billet the officers and soldiers in his Majesty's service, and their horses, when on actual service, in victualling houses and other houses specified in the act, under the regulations therein mentioned. These (by the 55th *sect.*) include all inns, livery-stables, alehouses, and the houses of sellers of wine by retail, whether British or foreign, to be drunk in their own houses or places thereunto belonging, and all houses of persons selling brandy, strong waters, cider, or metheglin by retail. But no one is to be billeted in any private house, or any canteen held under the ordnance, or upon persons who keep taverns and are freemen of the Vintners' Company of the city of London, notwithstanding such persons only have taken out victualling licences, nor in the house of any distiller, or of any shopkeeper whose principal dealing is more in other goods than in brandy and strong waters, so as they do not permit tippling in their houses, nor in the house of any foreign consul.

If any person shall find himself aggrieved by having an undue proportion of soldiers billeted in his house, and shall prefer his complaint, if against a constable, or other person not being a justice, to one or more justices, and if against a justice, then to two or more justices, within whose jurisdiction such soldiers are billeted, such justices respectively shall have power to order such of the soldiers to be removed, and to be billeted upon other persons as they shall see cause. When any cavalry shall be billeted upon the occupiers of

houses who shall have no stables, then, upon the written requisition of the commanding officer of the regiment, troop, or detachment, the constable is required to billet the men and their horses, or horses only, upon some other person or persons who have stables, liable to have officers and soldiers billeted upon them. Upon complaint being made by the person (to whose house or stables the men and horses shall have been so removed) to two justices, within whose jurisdiction such men or horses shall be so billeted, the justices may order a proper allowance to be paid by the person relieved to the person receiving such men and horses, or to be applied in furnishing the requisite accommodation. Commanding officers may exchange any man or horse billeted in any place with another man or horse billeted in the same place, for the benefit of the service, provided the number of men and horses do not exceed the number at that time billeted on such houses; and the constables are required to billet such men and horses so exchanged accordingly. Any justice, at the request of any officer or non-commissioned officer commanding any soldiers requiring billets, may extend any routes, or enlarge the districts, within which billets shall be required, in such manner as shall appear most convenient to the troops. And, to prevent or punish all abuses in billeting soldiers, any justice within his jurisdiction, by warrant or order under his hand, may require any constable to give him an account in writing of the number of officers and soldiers who shall be quartered by such constable, together with the names of the persons upon whom such officers and soldiers are billeted, stating the street or place where such persons dwell, and the sign (if any) belonging to those houses.

Supply of Carriages.]--By 2 & 3 Vict. c. 5, s. 57, for the regular provision of carriages for her Majesty's forces and their baggage in their marches, all justices within their several jurisdictions, being duly required thereunto by an order from her Majesty, or the general of her forces, or the master general or lieutenant general of her Majesty's ordnance, or other person duly authorized in that behalf, shall, on production of such order to such justices by some officer or non-commissioned officer of the regiment so ordered to march, issue a warrant to any constable having authority to act in any place, from, through, near, or to which the troop shall be ordered to march; for each of which warrants the fee of one shilling only shall be paid, requiring him to provide the carriages, horses and oxen and drivers therein mentioned, and allowing sufficient to do the same; specifying

places from and to which the said carriages shall travel, and the distance between the places; for which distance only so specified payment shall be demanded, and which distance shall not, except in cases of pressing emergency, exceed a day's march prescribed in the order of route, and shall in no cases exceed twenty-five miles; and the constables receiving such warrants shall order such persons as they shall think proper, having carriages, to furnish the requisite supply, who are hereby required to furnish the same accordingly. When sufficient carriages cannot be procured within the proper jurisdiction, any justice of the next adjoining jurisdiction shall, by a like course of proceeding, supply the deficiency. And, in order that the burthen of providing carriages may fall equally, and to prevent inconvenience arising from there being no justice near the place where troops may be quartered on the march, any justice residing nearest to such place may cause a list to be made out, once in every year, of all persons liable to furnish such carriages, and of the number and description of their said carriages, which list shall at all seasonable hours be open to the inspection of the said persons, and may, by warrant under his hand, authorize the constable within his jurisdiction to give orders to provide carriages, without any special warrant for that purpose; which orders shall be valid in all respects; and all orders for such carriages shall be made from such lists in regular rotation, as far as the same can be done.

By *sect. 58*, certain rates are to be made by the justices at their general sessions, which are to be paid for carriages thus impressed.

Supply of Carriages in cases of Emergency.—By 6 Will. 4, c. 8, s. 58, his Majesty, by his order distinctly stating that a case of emergency doth exist, signified by the secretary at war, may authorize any general or field officer commanding his Majesty's forces in any district or place, or the chief acting agent for the supply of stores and provisions, by writing under his hand reciting such order of his Majesty, to require all justices within their several jurisdictions to issue their warrants for the provision not only of waggons, wains, carts, and cars, kept by or belonging to any person, and for any use whatsoever, but also of saddle horses, coaches, post-chaises, chaises, and other four wheeled carriages kept for hire, and also of boats, barges, and other vessels used for the transport of any commodities whatsoever upon any canal or navigable river, as shall be mentioned in the said warrants; therein specifying the place and distance to which such carriages or vessels shall go. On the pro-

duction of such requisition to such justice by any officer of the corps ordered to be conveyed, or by any officer of the commissariat or ordnance department, the justice shall take all the same proceedings in regard to such additional supply so required, as he is required to take for the ordinary provision of carriages; and all provisions whatsoever as regards the procuring of the ordinary supply of carriages, and the duties of officers and non-commissioned officers, justices, constables, and owners of carriages in that behalf, shall be to all intents and purposes applicable for the providing and payment according to the rate of posting, or of hire usually paid, for such other description of carriages or vessels so required on emergency, according to the length of the journey or voyage in each case; but making no allowance for post-horse duty, or turnpike, canal, river, or lock tolls, which duty or tolls are declared not to be demandable for such carriages and vessels while employed in such service, or returning therefrom. Not only the baggage, provisions, and military stores of such regiment or detachment, but also the officers, soldiers, servants, women, children, and other persons of and belonging to the same, may be conveyed thereon.

Reimbursement of the Constables.—By sect. 59, the justices at their quarter sessions may direct the treasurer to pay without fee out of the county rate, or if insufficient, then out of the monies which the justices shall have power to raise for that purpose, in like manner as for county gaols and bridges, such reasonable sums as shall have been expended by the constables for carriages and vessels, over and above what was or ought to have been paid by the officer requiring the same, regard being had to the season of the year and condition of the ways by which such carriages and vessels are to pass.

Exemption from Tolls.—By 5 & 6 Vict. c. 12, s. 62, all her Majesty's officers and soldiers, being in proper staff or regimental or military uniform, dress or undress, and their horses (but not when passing in any hired or private vehicle), and all recruits marching by route, and all carriages and horses belonging to her Majesty, or employed in her service, when conveying persons or baggage under the provisions of the act, or returning therefrom, shall be exempted from payment of any duties and tolls, on embarking or disembarking from or upon any pier, wharf, quay, or landing place, or passing turnpike roads or bridges; and any toll collector, who shall demand and receive such toll shall forfeit not exceeding 5*l.* for every such

offence ; for which penalty he shall be prosecuted before a justice of the peace. But this is not to exempt any boats, barges, or other vessels employed in conveying the said persons, horses, baggage, or stores along any canal, from payment of tolls in like manner as other boats, barges, and vessels are liable thereto, except when employed in cases of emergency as before enacted.

Penalty upon Constables, &c. offending against the enactments relating to billeting and Carriages.—By 7 Will. 4 & 1 Vict. c. 7, s. 63, if any constable or other person, who shall be employed in billeting any officers or soldiers, shall presume to billet any such officer or soldier in any house not within the meaning of the act, without the consent of the owner or occupier thereof; or shall neglect or refuse to billet any officer or soldier on duty, when thereunto required, in such manner as is by the act directed, provided sufficient notice be given before the arrival of such troops; or shall receive, demand, or agree for any money or reward whatsoever, in order to excuse any person from receiving such officer or soldier; or shall quarter any of the wives, children, men or maid servants of any officer or soldier in any such houses against the consent of the occupiers; or shall neglect or refuse to execute such warrants of the justices as shall be directed to him for providing carriages, horses or vessels; or shall demand more than the legal rates for the same; or if any person, appointed by such constable to provide carriages, horses or vessels, shall do any act or thing by which the execution of such warrants shall be hindered; or if any constable shall neglect to deliver in to the justices at quarter sessions lists of officers and soldiers of the foot guards quartered according to the provisions of the act, or shall cause to be delivered defective lists of the same; or if any person, liable by the act to have any officer or soldier quartered upon him, shall refuse to receive and to afford proper accommodation or diet in the house in which such officer or soldier is quartered, and to furnish the several things directed to be furnished to officers and soldiers; or shall neglect or refuse to furnish good and sufficient stables, together with good and sufficient hay and straw for each horse at the rate established by the act, and in such quantities as shall be fixed by his Majesty's regulations, not exceeding eighteen pounds of hay and six pounds of straw per diem for each horse; or if any innkeeper or victualler, not having good and sufficient stables, shall refuse to pay over to the person who may provide stabling such allowance by way of compensation, as shall be directed by any jus-

tice; or shall pay any sum to any soldier on the march, in lieu of furnishing in kind the diet and small beer to which such soldier is entitled; the offender is liable to a penalty not exceeding 5*l.* nor less than 40*s.*

Penalty on the Military so offending.—By 6 Will 4, c. 8, s. 64, if any military officer shall offend against the above provisions as to billeting or supplying carriages, he is liable to be cashiered, on conviction by a court martial. And if he shall constrain any carriage to travel beyond the distance specified in the justice's warrant; or shall not discharge the same in due time for its return home on the same day, if it be practicable, except in the case of emergency, for which the justice shall have given licence; or shall compel the driver of any carriage to take up any soldier or servant (except such as are sick), or any woman, to ride therein, except in cases of emergency as aforesaid; or shall force any constable, by threatening words, to provide saddle horses for himself or servants; or shall force horses from their owners; or shall, contrary to the will of the owner or his servant, permit any person whatsoever to put any greater load upon any carriage than is directed by the act; he shall forfeit for every offence not exceeding 5*l.* nor less than 40*s.*

4. *Offences connected with Desertion.*

Apprehension of Deserters.—By 5 & 6 Vict. c. 12, s. 22, the constable of any place where any person reasonably suspected to be a deserter shall be found, or of any adjoining place, and if no such constable can be immediately met with, then any officer or soldier in her Majesty's service may apprehend such suspected person, and cause him to be brought before any justice living in or near such place, and acting for the same or any adjoining county; and if by his confession, or the testimony of one or more witnesses upon oath, or by the knowledge of such justice, it shall appear that such suspected person is a soldier, and ought to be with the corps to which he belongs, such justice shall forthwith cause him to be conveyed to some public prison in such place, or if there be none there, then to the nearest or most convenient public prison in the same or any next adjoining county; or if such deserter shall be apprehended by any party of soldiers of his own regiment, or shall be apprehended in the vicinity of the head quarters, or of any depôt of the regiment to which he shall belong, then such justice may deliver such deserter to the party of his regiment, or may order him to be taken to the

head quarters or depôt of the regiment to which he shall belong, instead of committing him to prison ; and the justice must transmit an account thereof (in the form prescribed in the schedule to the act) to the secretary at war, specifying at the foot thereof the commitment to prison, or delivery of such deserter to the party of his regiment, in order for his being taken to the head quarters or depôt of his regiment, as the case may be, to the end that such person may be removed by an order from the War Office, and be proceeded against according to law ; and the justice is also to send to the said secretary at war a report stating the names of the persons by whom the deserter was apprehended and secured ; and the secretary at war shall transmit to such justice an order for the payment to such persons of such sum, not exceeding 40s., as the secretary at war shall be satisfied they are entitled to. For such information, commitment and report, the clerk of the justice shall be entitled to a fee of 2s. and no more. Every gaoler, or other person, into whose custody any person charged with desertion is committed, shall, immediately upon receipt of the person so charged into his custody, notify the fact to the secretary at war, and transmit also a copy of the commitment.

Fraudulent Confession of Deserter.—By 6 Geo. 4, c. 8, s. 23, any person who shall voluntarily deliver himself up as a deserter from his Majesty's forces, or the embodied militia, or the forces of the East India Company, or who, upon being apprehended for any offence, shall in the presence of the justice confess himself to be a deserter, shall be deemed to have been duly enlisted, and to be a soldier, and shall be liable to serve in any of his Majesty's forces, whether such person shall have been ever actually enlisted as a soldier or not ; and in case such person shall not be a deserter from the regiment stated in such confession, he shall be liable to be punished as a rogue and vagabond, or may be prosecuted and punished for obtaining money under false pretences ; and the confession and receiving subsistence as a soldier by such person shall be evidence of the false pretence, and of the obtaining money to the amount of the value of such subsistence, and the value of such subsistence so obtained may be charged in the indictment as so much money received by such person. In case such person shall have been previously convicted of the like offence, or as a rogue and vagabond for making a fraudulent confession of desertion, such former conviction may be alleged in the indictment, and may be proved upon the trial of such person ; and in such indictment for a second offence, it shall

be sufficient to state that the offender was at a certain time and place convicted of obtaining money under false pretences as a deserter, or as a rogue and vagabond for making a fraudulent confession of desertion, without otherwise describing the said offence. A certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction of the former offence, purporting to be signed by the clerk of the court or other officer having the custody of the records of the court where the offender was first convicted, or by the deputy of such clerk, or by the clerk of the convicting magistrates, shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same. If the person, so confessing himself to be a deserter, shall be serving at the time in any of his Majesty's forces, he shall be deemed to be and shall be dealt with as a deserter.

Penalty for inducing to desert.]—By *sect. 25*, every person who shall, directly or indirectly, persuade any soldier to desert, shall suffer such punishment, by fine or imprisonment, or both, as the court before which the conviction may take place shall adjudge; and every person who shall assist any deserter, knowing him to be such, in deserting or in concealing himself, shall forfeit for every such offence the sum of 20*l*.

Penalty on Officers unlawfully searching.]—By *sect. 26*, every commissioned officer who shall, without warrant from a justice, forcibly enter into or break open the dwelling-house or out-houses of any person whomsoever, under pretence of searching for deserters, shall upon due proof thereof forfeit the sum of 20*l*.

5. *Penalty for purchasing Soldiers' Necessaries, &c.*

By 4 & 5 Vict. c. 2, s. 66, any person who shall unlawfully have in his or her possession or keeping, or who shall knowingly detain, buy, exchange, or receive from any soldier or deserter or any other person on any pretence whatsoever, or shall solicit or entice any soldier, or shall be employed by any soldier, knowing him to be such, to sell, any arms, ammunition, clothes, or military furniture, or any provisions, or any sheets, or other articles used in barracks provided under barrack regulations, or regimental necessaries, or any article of forage provided for any horses belonging to her Majesty's service, or shall change the colour of any clothes as aforesaid, shall forfeit for every such offence not exceeding 20*l*., together with treble

value of all or any of the several articles of which the offender shall become so possessed. If any person having been so convicted shall afterwards be guilty of any such offence, and shall be convicted thereof by one or more justices of the peace, every such offender shall for every such offence, in addition to the forfeiture of treble value of all or any of the several articles of which such offender shall have so become possessed, be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for such term not exceeding six calendar months, as the convicting justice or justices shall think fit. Upon any information against any person for a second or any subsequent offence, a copy of the conviction, certified by the proper officer having the care or custody of such conviction, or any copy of the same proved to be a true copy, shall be sufficient evidence to prove a conviction of the former offence.

If any credible person shall prove on oath before a justice a reasonable cause to suspect that any person has in his or her possession, or on his or her premises, any property of the description before described, on or with respect to which any such offence shall have been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods; and if upon search any such property shall be found, the same shall and may be seized by the officer charged with the execution of such warrant, who shall bring the offender in whose possession the same shall be found before such justice, to be dealt with according to law.

6. *Attestation of Accounts.*

By 6 Will. 4, c. 8, s. 48, all commissaries, upon making up their accounts, and also upon returning from any foreign service, must make the declaration described in the schedule to the act, before some justice. And by *sect. 74*, all muster-rolls and pay-lists, which are required to be verified by declaration, must also be sworn and attested by any justice, without fee or reward.

7. *Penalty for killing Game.*

By 6 Will. 4, c. 8, s. 68, every officer who shall, without leave in writing from the persons entitled to grant such leave, take, kill, or destroy any game or fish, and, upon complaint thereof, shall be, upon oath of one or more credible witness or witnesses, convicted before any justice, shall for every such offence forfeit the sum of 5*l*.

8. *Licences of Canteens.*

By 6 Will. 4, c. 8, s. 73, when any persons shall hold any canteens, under proper authority of the board of ordnance, any two justices within their respective jurisdictions may grant or confer any beer, wine, or spirit licence to such persons, without regard to the time of year, or to the notices or certificates required by any act in respect of such licences; and the commissioners of excise, or their proper officers, within their respective districts, shall also grant such licences; and such persons so holding canteens, and having such licences, may sell therein victuals and excisable liquors, as empowered by such excise licence, without being subject to any penalty or forfeiture.

9. *Recovery and Application of Penalties.*

By 6 Will. 4, c. 8, s. 76, all offences, for which the penalties are not exceeding 20*l.*, over and above any forfeiture of value or treble value, may be determined, and such penalties and forfeitures be recovered, by one justice, under the provisions of the 3 Geo. 4, c. 23 (*d*), for facilitating summary proceedings before justices of the peace, and the 5 Geo. 4, c. 18 (*e*), for the more effectual recovery of penalties on convictions before them. And in all cases where there are not sufficient goods on which to levy a penalty, the offender may be committed not exceeding six months.

By 7 Will. 4 & 1 Vict. c. 7, s. 77, one moiety of every penalty, not including any treble value of any articles adjudged or recovered, shall go to the informer, and the remainder, together with the treble value of any articles, or where the offence shall be proved by the informer, then the whole penalty, shall be paid to the general agent for the recruiting service in London, to be at the disposal of the secretary at war; to whom every justice, who shall adjudge any penalty, must, within four days at the farthest, report the same.

Marine Forces.

There is also an annual act, passed for the regulation of her Majesty's marine forces, while on shore, the provisions of which are nearly the same as those of the annual mutiny acts relating to the regular army. The last marine mutiny act, which is given at full length in the edition of the statutes, is the 1 Will. 4, c. 14, and the last one actually passed is the 5 & 6 Vict. c. 13.

(*d*) See *ante*, p. 194.

(*e*) See *ante*, p. 233.

1. Questions to be put separately by the Justice to a Recruit.

Enlisting for Unlimited Service.

1. What is your name?
2. In what parish, and in or near what town, and in what county were you born?
3. What is your age?
4. What is your trade or calling?
5. Are you an apprentice?
6. Are you married?
7. Are you ruptured or lame? have you ever been subject to fits? or have you any disability or disorder which impedes the free use of your limbs, or unfits you for ordinary labour?
8. Are you willing to be attested to serve in the — regiment of — until you shall legally be discharged?
9. On what day and by whom were you enlisted?
10. For what bounty did you enlist?
11. Do you now belong to the militia?
12. Do you belong to any other regiment, or to the marines, ordnance, or navy?
13. Have you ever served in the army, marines, ordnance, or navy?

Note.—The justice is directed, in putting the 11th question to the recruit, and before he receives his answer, distinctly to apprise the recruit that if he belongs to the militia, and denies the fact, he is liable to six months' imprisonment.

Enlisting for Unlimited Service in her Majesty's Colonies.

Question 8 to be put by the justice as follows:—

8. Are you willing to be attested to serve in her Majesty's colony of — until you shall be duly and legally discharged?
-

2. *Enlisting for Limited Service.*

The preceding questions to be put by the justice, except question 8, which is to be as follows:—

8. Are you willing to be attested to serve in the — regiment of —, for the period of —, [*this blank to be filled up by the justice with "seven" years for infantry, "ten" years for cavalry, and "twelve" years for the artillery, if the person enlisted is of the age of eighteen years or upwards; but if under the age of eighteen years, then the difference between his age and eighteen to be added to such seven, ten, or twelve years, as the case may be*] years, provided her Majesty should for so long require your service, and also for such further term, not exceeding six months, as shall be directed by the commanding officer on any foreign station, and not exceeding three years, as shall be directed by any proclamation of her Majesty, such additional period, in the latter case, to determine whenever six months of continued peace, to be reckoned from the ratification of any definitive treaty, shall have elapsed subsequent to the expiration of the said [*"seven," "ten," or "twelve," as the case may be*] years?
-

3. *Enlisting for either her Majesty's or the East India Company's Service.*

Question 8 to be put by the justice as follows:—

8. Are you willing to be attested to serve in her Majesty's army, or in the forces of

the East India Company, according as her Majesty shall think fit to order, until you shall be duly and legally discharged? _____

4. *Enlisting for the East India Company's Service.*

Question 8 to be put by the justice as follows :—

8. Are you willing to be attested to serve the East India Company, until you shall be legally discharged? [*or if the recruit enlists for limited service, then insert, "for the period of twelve years," if the person enlisting is of the age of eighteen years or upwards; but if under eighteen years, then the difference between his age and eighteen to be added to such twelve years, as the case may be, and such period to be inserted, instead of twelve years*] provided the said United Company should so long require your service?

5. *Oath to be taken by a Recruit enlisting for Unlimited or Limited Service.*

I —, do make oath, that the above questions have been separately put to me; that the answers thereto have been read over to me; and that they are the same that I gave, and are true.

I do also make oath, that I will be faithful and bear true allegiance to her Majesty, her heirs and successors, and that I will, as in duty bound, honestly and faithfully defend her Majesty, her heirs and successors, in person, crown, and dignity, against all enemies, and will observe and obey all orders of her Majesty, her heirs and successors, and of the generals and officers set over me. So help me God.

Witness my hand _____ Signature of recruit.

_____ Witness present.

Sworn before me at —, this — day }
of —, 1843, at — o'clock. }

Signature of justice.

If enlisting for either her Majesty's or the East India Company's Service, the following addition is to be made to the foregoing Oath.

And that if her Majesty, her heirs or successors, shall please to appoint me to serve in the forces of the East India Company, then I swear, that I will also be true to the said United Company, and will duly observe and obey all their orders, and the orders of their generals and officers who shall be lawfully set over me.

If enlisting for the East India Company's Service, the following is to be added to the Oath.

And that I will also be true to the said United Company, and will duly observe and obey all their orders, and the orders of their generals and officers who shall be lawfully set over me.

Certificate to be given by the Justice.

Description of
Age, apparently,
Height, — feet, — inches.
Complexion,

Eyes,
Hair,
Any distinctive mark,

I, —, one of her Majesty's justices of the peace, of —, do hereby
to wit. } certify that the above is the description of the recruit —, and in my
presence all the foregoing questions were put to the said —; that the answers
written opposite to them are those which he gave to me; and that the 1st and 2nd
articles of the 2nd section of the Articles of War were read over to him; that he took
the oath of allegiance and fidelity; that he received the sum of — on being attested
this day; and that I have given him a duplicate of this certificate signed with my name.

Signature of the justice.

6. *Form of Oath to be taken by a Master, whose Apprentice has absconded.*

I, —, of —, do make oath, that I am by trade a —, and that — was
bound to serve as an apprentice to me in the said trade, by indenture dated the —
day of —, for the term of — years; and that the said — did, on or about the
— day of —, abscond and quit my service without my consent; and that, to the
best of my knowledge and belief, the said — is aged about — years. Witness my
hand at —, the — day of —, 1843.

Sworn before me at — this — day }
of —, 1843. }

7. *Form of Justice's Certificate to be given to the Master of an Apprentice.*

I, —, one of her Majesty's justices of the peace of —, do certify
to wit. } that — of —, came before me at — the — day of —, 1843,
and made oath that he was by trade a —, and that — was bound to serve as an
apprentice to him in the said trade, by indenture dated the — day of —, for the
term of — years; and that the said apprentice did, on or about the — day of
—, abscond and quit the service of the said — without his consent, and that to
the best of his knowledge and belief the said apprentice is aged about — years.

8. *Form of Declaration of Attestation of a Commissary's Accounts.*

I, —, do solemnly and sincerely declare, that I have not applied any money, or
stores or supplies, under my care or distribution, to my own use, or to the private use
of any other person, by way of loan to such person or otherwise, or in any manner
applied them, or knowingly permitted them to be applied, to any other than public
purposes, according to the duty of my office. And I make this solemn declaration
conscientiously, believing the same to be true, and by virtue of the provisions of an
act passed in the 5th and 6th years of the reign of his Majesty King William the
Fourth, c. 62, for the abolition of unnecessary oaths and for substituting declarations
in lieu thereof.

Declared before me by the within named

— this — day of —, 1843. J. P., Justice of the peace for the county
of —.

9. *Account to be transmitted by a Justice to the Secretary at War, in regard to a Deserter.*

No.

Description Return of —, committed to confinement at —, on the — day of —, as a deserter from the — regiment of —.

Age	{	
Height	{	Feet. Inches.
Complexion	{	
Hair.....	{	
Eyes.....	{	
Marks	{	
Probable date of enlistment and where	{	
Probable date of desertion and from what place	{	
(e) {	Name and occupation and address of the person by whom apprehended	
	Particulars in the evidence on which the prisoner is committed	
	Whether the prisoner was apprehended, or voluntarily surrendered himself as a deserter	
	Whether the prisoner confessed before the magistrate that he is a deserter	

I do hereby certify, that the prisoner has been duly examined before me as to the

(e) It is important for the public service, and for the interest of the deserter, that this part of the return should be accurately filled up, and the details should

be inserted by the magistrate in his own handwriting, or under his direction by his clerk.

circumstances herein stated, and has declared in my presence that he (f) deserter from the above mentioned corps.

Signature and address of
magistrate.

Signature by prisoner.

Signature of informant.

I certify that I have inspected the prisoner, and consider him (g) for military service.

Signature of military medical
officer, or of private medical practitioner.

(f) Insert "is," or "is not," as the case may be.

(g) Insert "fit," or "unfit," as the case may be; and if unfit, state the cause of unfitness.

Spring Guns.

By 7 & 8 Geo. 4, c. 18, s. 1, if any person shall set any spring gun, man trap, or other engine calculated to destroy human life or inflict grievous bodily harm, with intent that the same, or whereby the same, may destroy, or inflict grievous bodily harm on a trespasser, or other person coming in contact therewith; he is guilty of a *misdemeanor*. But by *sect. 2*, it is declared not to be illegal to set any gun or trap, such as have been, or may be, usually set, with the intent of destroying vermin.

By *sect. 3*, if any person shall knowingly and wilfully permit any spring gun, man trap, or other engine, which shall have been previously set, fixed, or left in any place (then being in, or afterwards coming into his own possession or occupation) by some other person, to continue so set or fixed; such person shall be deemed to have set and fixed the same.

By *sect. 4*, the act is not to extend to any spring gun, or man trap, set from sun-set to sun-rise in a dwelling-house, for the protection thereof (h).

—◆—
Stabbing—See Maiming.

—◆—
Stacks, Firing them—See Arson.

(h) And see 2 Deac. Crim. L. 1245.

Stage Coaches.

FOR the law as to metropolitan stage carriages, see *Hackney Coaches*.

Definition of a Stage Carriage.—By 2 & 3 Will. 4, c. 120, every carriage used or employed for the purpose of conveying passengers for hire to or from any place in Great Britain, and which, when passing along any highway or other road, shall travel at the rate of three miles or more in the hour, shall, without regard to the form or construction thereof, be deemed and taken to be a stage carriage, within the meaning of the act; provided the passengers, or any one or more of them, shall be charged, or shall pay, separate and distinct fares for their respective places. And in all proceedings at law it shall be sufficient to describe any carriage so used or employed by the term “stage carriage,” without further or otherwise describing the same. But this is not to extend to or to include any carriage used or employed wholly upon any railway, nor to any carriage drawn or impelled by the power of steam, or otherwise than by animal power.

Licence, &c.—By *sect. 6*, no person can keep, use, or employ any stage carriage, unless he shall have a licence⁽ⁱ⁾ in force so to do, granted to him by two of the commissioners of stamps, or by some person duly authorized by them (under the provisions of section 8), nor unless there shall be fixed on such carriage the numbered plates directed to be delivered with every such licence, nor unless certain particulars directed by the act are painted thereon.

What shall be deemed a Stage Carriage, and who the Owner.—By *sect. 7*, in any proceeding for the recovery of any duty or penalty incurred under the act, if evidence shall be given that the carriage, in respect of which the proceeding shall be commenced, was seen travelling or going upon any highway or other road, having fixed or placed thereon any numbered plate provided or used in pursuance of this or any former act, or having thereupon any plate resembling, or intended to resemble, any such plate, or having painted upon such carriage any of the particulars required by the act, such carriage shall be deemed and taken to be a stage carriage, unless the contrary be proved; and the person named in the

(i) See 5 & 6 Vict. c. 79, s. 8, *post*, p. 1224.

licence, whether such licence shall be in force or not, or the person whose name shall be painted on any such carriage, shall, unless the contrary be proved, be deemed to be the person to whom such carriage doth belong.

Keeping or using without a Licence.]—By sect. 27, if any person shall keep, use, or employ, or shall be concerned as a proprietor in the keeping, using, or employing of, any stage carriage, without having a licence in force under the act; or if any person, whether he shall have a licence or not, shall keep, use, or employ any stage carriage, not having placed and fixed thereupon (in the manner directed by the act) the proper numbered plate, or having thereupon any plate the number or device whereon shall be in any manner obliterated, defaced, or obscured, so that the same shall not be distinctly visible and legible; or if any person to whom licence has been granted shall, for the space of one week, after notice that the plates to which such licence shall relate have been recalled, neglect or refuse to deliver up the plates mentioned in such notice; the offender shall forfeit 20*l*.

Using contrary to Licence, or with improper Plates.]—By sect. 28, if any person, to whom any licence shall be granted, shall permit or suffer such carriage to perform a greater number of journies, or to travel a greater number of miles, or to be used on any other day, or for the performing of any other journey, than shall be mentioned or allowed in or by such licence; or shall fix or place upon such carriage any plate having a number different from the number mentioned in or authorized by the licence; he shall be deemed to be a person keeping, using, and employing a stage carriage, without having a licence in force so to do, and shall accordingly be subject and liable to the penalty of 20*l*.; and in all proceedings against such person it shall be sufficient to allege, that he did keep, use, and employ a stage carriage, without having a licence, and it shall not be necessary further to describe any such offence, nor to prove that the carriage was used or employed for the conveyance of passengers at separate fares.

Representatives of persons licensed.]—By sect. 29, whenever any person to whom a licence has been granted shall die, or become bankrupt or insolvent, his representatives may keep, use, and employ the stage carriage, according to the terms of such licence, for the space of thirty days; but they are chargeable with the payment of the duty, which shall accrue or become payable in respect of such

stage carriage from the time of such death, &c., and are also liable to all other the provisions and regulations of the act.

Plying for Hire without proper Plates.—By sect. 30, if any carriage, whether licensed as a stage carriage, or not, shall be found upon or near to any public highway, and any person shall ply for passengers to be conveyed thereby for hire at separate fares, such carriage not having placed and fixed thereupon the numbered plates required by the act, the driver of such carriage, or the person having the care thereof, or plying for passengers, shall forfeit 10*l.*, and if he shall be the owner 20*l.* Any constable, or other peace officer, or any officer of stamp duties, without any warrant, may apprehend the offender, and convey him before a justice, and drive or take the carriage and the horses to some public green yard, or some livery stables, or other place of safety, and there lodge the same for safe custody, until the determination of the justice. In case the person convicted of any such offence shall be the owner of the carriage, and the penalty of 20*l.*, with all costs and expenses, shall not be fully paid within five days after such conviction, the carriage and horses, with the harness used therewith, shall be sold by order under the hand of the justice, to satisfy the penalty, costs and expenses; but in case the person so convicted shall not be the owner, then on default in payment of the penalty of 10*l.*, the justice shall commit the offender to the common gaol or house of correction for the space of three calendar months; and shall give an order for the delivering up of the carriage and horses to the owner, on paying the expenses of taking and keeping the same; and in case of his refusal to do so, they may in like manner be sold to defray such expenses (*h*).

Stage Carriages may take up, and set down, within the Hackney Coach district.—By sect. 31, the proprietor or driver of any stage carriage duly licensed, and having thereon the proper numbered plates, may stand or ply for passengers, and take up, convey, and set down such passengers at any place either within the distance of five miles from the general post office, or elsewhere, provided such stage carriage shall not deviate from the proper route or line of road, or shall not go beyond the limits allowed by such licence.

Forging Plates, &c.—By sect. 32, if any person shall forge or counterfeit, or shall cause or procure, &c. any numbered plate, or

(*h*) See 5 & 6 Vict. c. 79, s. 11, which extends the provisions of the above section, *post*, p. 1225.

shall wilfully fix or place, or cause or permit, &c. upon any carriage, any such forged or counterfeited plate; or if any person shall sell or exchange, or expose to sale, or utter the same; or if any person shall knowingly, and without lawful excuse (the proof whereof shall lie on the person accused) have or be possessed of the same, knowing it to be forged or counterfeited; the offender is guilty of a *misdemeanor*, and liable to be punished by fine or imprisonment, or by both, with or without hard labour. Any officer of stamp duties, or any constable or other peace officer, or any toll gate keeper, may seize and take away any such plate, in order that the same may be produced in evidence against such offender, or be disposed of as the commissioners of stamps shall think proper.

Plates improperly detained or used may be seized.—By *sect. 33*, if after the expiration or discontinuance of a licence, any person shall use, detain, or have in his possession the numbered plate mentioned in such licence, or shall neglect to deliver the same at the stamp office; or if any person shall use, or detain, or have in his possession, any numbered plate, without having a licence in force, relating to such plate; or if any person shall use, or detain, or have in his possession any numbered plate which shall have been recalled by the commissioners of stamps, whether the licence relating thereto shall be in force, or not; any officer of stamp duties, or any constable, or other peace officer, or any tollgate keeper, may seize and take away any such plate, wheresoever the same may be found, in order to deliver the same to the commissioners, and for that purpose may stop any carriage upon which the same may be placed; and any person, who shall molest, obstruct, or hinder him in seizing, or endeavouring to seize or take away, such plate, shall forfeit 20*l*.

Penalty for carrying an improper Number of Passengers.—By *sect. 34*, if the number of passengers at any one time conveyed in the inside of any stage carriage, or upon or about the outside (*i*) thereof, shall be greater respectively than the number of inside or outside passengers respectively specified in such licence, the person to whom such licence shall have been granted shall forfeit 5*l*. for every passenger so conveyed above the number allowed by such licence, and the driver shall also forfeit 5*l*.

Allowance for Children.—But by *sect. 35*, no children in the

(i) See 3 & 4 Will. 4, c. 48, s. 2, for further regulations as to outside passengers, *post*, p. 1223. And see also 5 & 6 Vict.

c. 79, ss. 13, 15, 17, for further regulations as to both descriptions of passengers, *post*, p. 1226.

lap shall be counted as passengers ; and no child under seven years of age shall be so counted, unless there shall be more than one such child, in which case two of such children shall be considered as one passenger, and so on in the same proportion.

Particulars to be painted on Stage Carriages.—By sect. 36, no stage carriage shall be used or employed, unless, nor until there shall be truly painted in words at length, and in legible and conspicuous letters one inch at the least in height, and of a proper and proportionate breadth, and in a colour different from and opposite to the colour of the ground on which such letters shall be painted, upon some conspicuous part of each side of such carriage, and clear of the wheel or wheels thereof, so that the same shall be at all times plainly and distinctly visible and legible, the christian name and surname of the proprietor or of one of the proprietors of such carriage, and also the names of the extreme places from which and to which such carriage shall be licensed to travel or go ; and there shall also be painted in like manner, upon some conspicuous place on the back of such stage carriage, the greatest number of passengers allowed to be taken in the inside and on the outside thereof respectively ; under the penalty of 5*l.* for any default (*h*).

When no outside Passengers or Luggage to be taken.—By sect. 37, no outside passenger nor luggage shall be carried on the top or roof, which from the ground shall be more than eight feet nine inches, or the bearing of which on the ground shall be less than four feet six inches, from the centre of the track of the right or off wheel to the centre of the track of the left or near wheel ; under the penalty of 5*l.* on the driver.

Height of Luggage on the top.—By sect. 43, no luggage, which shall be carried on the top or roof of a carriage drawn by four or more horses, shall in any case exceed ten feet and nine inches in height from the ground, nor when drawn by two or three horses ten feet and three inches in height, measuring to the highest point of any part of such luggage ; under the like penalty of 5*l.* on the driver.

Driver must stop to have Passengers counted.—By sect. 45, the driver, when required by any justice, constable, surveyor of the highway or turnpike road, toll gate keeper, officer of stamp duties, or by any passenger travelling with any stage carriage, must permit such

(*h*) And see further 2 & 3 Vict. c. 66, s. 2, *post*, p. 1224, and 5 & 6 Vict. c. 79, s. 14, *post*, p. 1226.

carriage, and the luggage thereon, to be measured, and the number of passengers to be counted; and any passenger may require the driver to stop at any toll gate, and require the toll gate keeper to count the number of passengers, and measure the height of the luggage thereupon, and to sign a memorandum in writing of the number of such passengers in the inside, and on or about the outside (distinguishing the number on the box), and of the height of such luggage, and to deliver such memorandum to such passenger; and the toll gate keeper shall provide and keep a proper measure for this purpose; under the penalty of 5*l.* on the driver or toll gate keeper for any default. But no one passenger can require the driver to stop more than once during any one journey, unless, after such counting or measuring, any additional passenger shall be taken up, or additional luggage shall be placed on the top during the same journey.

Misconduct of Driver or Guard.—By sect. 47, if the driver of any stage carriage drawn by three or more horses shall, at any place where it shall stop, quit the box or the horses, without delivering the reins into the hands of some fit and proper person, or before some fit and proper person shall be placed and shall stand at the heads of the horses, or some of them, and shall have the command thereof; or if any person so placed shall leave the horses before some other proper person shall be placed in like manner, and have the command of such horses, or before the driver shall have returned and seated himself upon the box and taken the reins; or if the driver shall permit any other person than himself to drive; or shall quit the box without reasonable occasion, or for a longer time than such occasion shall absolutely require; or shall suffer any plate, or the number thereon, to be in any manner concealed from public view, or to be inverted, or so fixed or placed that the number thereon shall not be plainly and distinctly legible; or if any person travelling as guard shall, whilst the horses are harnessed, or in the act of being harnessed, and whilst any passenger shall be in, upon, or about such carriage, discharge any fire arms, except for necessary defence; or if the driver, or conductor, or guard, shall neglect to take due care of any luggage, or shall demand or receive for the fare of any passenger more than he is liable to pay, or more than is properly chargeable for the carriage of any luggage; or shall, when thereto required, neglect or refuse faithfully to account to his employer for all monies received by him in respect of any passenger, or

any luggage; or shall assault, or use abusive or insulting language to any person travelling, or about to travel, or having travelled as a passenger, or to any person accompanying or attending upon any such passenger in coming to or going from any such carriage; every such offender shall forfeit 5*l*.

Furious Driving.—By *sect. 48*, if the driver, or conductor, or guard, or any other person having the care of a stage carriage, or employed in, upon, or about the same, shall, through intoxication or negligence, or by wanton and furious driving, or by or through any other misconduct, endanger the safety of any passenger or other person, or shall injure or endanger the property of the owner of such stage carriage, or of any other person; the like penalty of 5*l*.

When Proprietor responsible for Drivers.—By *sect. 49*, whenever any penalty is imposed upon the driver, or conductor, or guard, and he shall not be known, or being known cannot be found, then the proprietor shall be liable to every such penalty. But if such proprietor shall make out to the satisfaction of the justice by sufficient evidence, not resting on his own testimony, that the offence was committed without the privity or knowledge of such proprietor, and that no profit, advantage, or benefit, either directly or indirectly, has accrued, or can accrue, to such proprietor therefrom, and that he has used his endeavour to find out such driver, conductor, or guard, and given all reasonable information in answer to inquiries respecting him, the justice shall then discharge the proprietor from such penalty, and levy the same upon such driver, conductor, or guard, when found.

Recovery of Penalties, &c.—By *sect. 103*, all penalties not exceeding 20*l*. are recoverable before one justice, on the oath of one witness, by distress; in default of which, commitment not less than three, nor more than six, calendar months, if the penalty amounts to 20*l*.; and not less than one calendar month, nor more than three, if the penalty is under 20*l*. An appeal is given to the sessions; and no proceedings to be quashed for want of form, nor removed by *certiorari*.

Who may prosecute.—By *sect. 104*, no other person than the solicitor of stamps, or some other officer of the stamp office, can prosecute for the recovery of any penalty, except for any offence which may subject to a penalty the driver, or conductor, or guard, or any person employed to hold the horses, or having the care of or being employed in or about any stage carriage, or any toll gate keeper, toll collector, constable, or peace officer, or by reason of any

person summoned as a witness neglecting or refusing to attend or give evidence.

Mitigation of Penalties.—By *sect. 105*, the justice may mitigate any penalty, so as such mitigation do not reduce it to less than one fourth, exclusive of costs.

Application of Penalties.—By *sect. 106*, all pecuniary penalties, which shall be sued for by any other person than the attorney-general or some officer of stamp duties, shall be divided in manner following; one moiety to his Majesty, and the other moiety, with full costs, to the person who shall prosecute for the same within fourteen days after the offence shall have been committed; and all such penalties, which shall be sued for in the name of the attorney-general, &c., or for the recovery of which any information shall be made after the expiration of the time aforesaid, shall be applied to the use of his Majesty. But the commissioners of stamps may give all or any part of such penalties belonging to his Majesty, as a reward to any person who shall have detected any offence, or given information which may have led to the discovery thereof, or to the conviction of the offender.

By *sect. 107*, the justice is to receive the crown's share of any penalty, and pay the same to the clerk of the peace, to be remitted to the stamp office.

Justices may award Compensation for loss of time, &c.—By *sect. 108*, if the proprietor of any stage carriage, or the driver, or guard, shall be summoned before any justice to answer any complaint made against him by any person, other than an officer of stamp duties, and such complaint shall afterwards be withdrawn, or dismissed, or the defendant be acquitted, the justice may order complainant to pay to the defendant such costs, and also such compensation for his loss of time, and for the time of his witnesses, as shall seem reasonable; and in default of immediate payment, the same may be levied by distress. If no sufficient distress, then the justice may commit such person to the common gaol or house of correction not exceeding one calendar month.

Service of Process.—By *sect. 109*, any summons, or a copy thereof, may be served either personally, or be left at the party's usual or last place of residence, or in case such person be a proprietor, driver, conductor, or guard of any stage carriage, the same may be left with the book keeper for such stage carriage in any town

or place, from, into, or through which such carriage shall go or be driven nearest to the place where any such offence shall be committed; and any notice required to be given to a proprietor may be served in the same manner.

Default of Constables, &c.—By *sect. 110*, if any constable, or other peace officer, shall refuse or neglect to serve or execute any summons, warrant, or order, he shall forfeit 10*l.*

Default of Witnesses.—By *sect. 111*, if any person summoned as a witness shall neglect to appear, without a reasonable excuse, or if appearing he shall refuse to be examined and give evidence, he shall forfeit 10*l.*

Proceedings, &c.—By *sect. 112*, officers of stamp duties are not disqualified from being witnesses.

By *sect. 113*, all proceedings are to be drawn up according to the forms in schedule (B.).

Sect. 115 directs in what manner goods distrained shall be sold. And, by *sect. 116*, there is the usual limitation and restriction as to actions.

By *sect. 117* there are general rules laid down for the construction of terms used in the act, among them as follows:—that the term “toll gate keeper” shall be construed to mean and include the keeper of any gate or bar at which any toll is payable, or any ticket is receivable, for any horse or carriage, or the collector of tolls thereat, or any person acting as such keeper or collector respectively; that the term “driver” shall be construed to mean the coachman, driver, or director of any stage carriage; and that the term “luggage” shall be construed to mean any trunk, box, bale, parcel, package, corn, or other article, whether the same shall or shall not belong to any passenger.

Penalty for carrying an improper number of outside Passengers.—By 3 & 4 Will. 4, c. 48, s. 1, so much of the 2 & 3 Will. 4, c. 120, as regulated or restricted the number of passengers allowed to be carried on the outside of any stage carriage, or regulated or related to the distribution or placing of, or the manner of carrying, the outside passengers,—and also so much as required that a separate division or space should be allowed for luggage on the top or roof of any stage carriage,—is repealed. And (by *sect. 2*) the number of outside passengers is regulated by the height of the top from the ground, and the bearing from the centre of the track of the off wheel to the centre of the track of the near wheel; which regulations are re-

enacted by the 5 & 6 Vict. c. 79, s. 17 (1). But in no case shall a greater number of passengers be carried on the outside, than the licence shall authorize. If any greater number shall be carried than before specified, or if any outside passenger shall be carried by any stage carriage not expressly licensed to carry any outside passenger, the driver shall forfeit 5*l*.

By *sect. 3*, the number of outside passengers shall be reckoned, exclusive of the driver, and the conductor or guard, or any children in the lap; and no child under seven years of age shall be counted as a passenger, unless there shall be more than one, in which case two of such children, if not in the lap, shall be accounted one passenger.

By *sect. 4*, no person shall be allowed to sit or be carried upon any luggage placed on the roof, and not more than one passenger shall be allowed to sit upon the box with the driver; under the penalty of 5*l*. on the driver.

By *sect. 5*, all the provisions of the former act relating to penalties apply to the penalties imposed by this act.

By 2 & 3 Vict. c. 66, s. 1, the duties on stage carriages are repealed, and reduced duties granted in lieu thereof. But all the regulations and penalties respecting the duties imposed by the former act apply to the duties imposed by this act.

Penalty for Inscriptions contrary to Licence.—By *sect. 2*, if any stage carriage shall be used, having any inscription thereon importing or signifying, or intended to import or signify, that such carriage is licensed to carry, either in the whole, or in the inside, or on or about the outside thereof, any number of passengers other than the actual number, which such carriage is by the licence relating to the numbered plate fixed thereon expressly authorized to carry, the proprietor shall forfeit the sum of 5*l*., to be recovered and applied in like manner as any penalty incurred under the former act.

Licences.—By 5 & 6 Vict. c. 79, s. 8, every licence for keeping, using, or employing any stage carriage (except an original licence granted between the first Monday in October and the first day of November in any year) shall be dated on the day on which the same shall be granted, and shall commence and have effect upon the same day, or any subsequent day, to be specified in such licence as the day of the commencement thereof. And no supplementary licence shall

(1) See *post*, p. 1227.

be granted, in lieu of any licence which shall have been previously granted, before the time appointed for the commencement of such last-mentioned licence. And (by *sect. 10*) certified copies of licences are admissible in evidence.

Using Carriages without the proper Plates fixed thereon.—By *sect. 11*, if any stage carriage, whether licensed or not, shall be used upon any public highway for the purpose of carrying or conveying any passengers, one or more of whom shall be charged or shall pay separate and distinct fares, or a separate and distinct fare, or at the rate of separate and distinct fares for their respective places or seats, or his place or seat therein, or conveyance thereby, such carriage not having placed and fixed thereupon the numbered plates required by the 2 & 3 Will. 4, c. 120, to be fixed on stage carriages, the driver, and also the conductor or guard thereof, or other person having the direction, management, or care thereof, or assisting therein, shall forfeit the sum of 10*l.*, or if he be the owner, the sum of 20*l.* And any officer of stamp duties, without any warrant for that purpose, with or without the aid and assistance of any constable or peace officer or other person, at any place where the journey for the performance of which such carriage shall be used shall terminate, or on the return of such carriage to the place from whence such journey commenced, may apprehend such driver and such conductor, guard, or other person, and carry and convey him before any justice of the peace having jurisdiction where the offence shall be committed, to be dealt with as thereafter and as in the former act is mentioned; and may also seize and take such carriage, with the horses harnessed thereto, or drawing or having drawn the same, and drive or take the same to some public green yard, or livery stables, or other place of safety, and there lodge the same for safe custody until the determination of the justice shall be known; who shall proceed therein as in the former act is provided in relation to the offences before described. Every such penalty, and also such costs and expenses as in the former act are mentioned, respectively, shall be recovered by the same ways and means, and if necessary the offender committed for the same time, as in such act are in that behalf provided. But nothing shall in any way affect or alter the provision contained in the former act, so far as the same relates to the offences before described.

By *sect. 12*, the provisions contained in the former act of 2 & 3 Will. 4, c. 120, s. 46, excepting mail coaches from the regulations as to plates, is repealed.

Number of Passengers.—By sect. 13, no stage carriage shall be allowed to carry at one time a greater number of passengers in the whole, or in the inside, or on the outside thereof, than the same is constructed to carry, according to the regulations of the act; and no such carriage shall be deemed to be constructed to carry a greater number of passengers, than the same will contain at one time upon fit and proper seats provided therein or thereupon for that purpose, allowing for every passenger on an average, upon each and every separate seat, a space convenient of sitting thereon of sixteen inches, measuring in a straight line lengthwise on the front of each seat. No child under five years of age, sitting in the lap, is to be deemed a passenger.

Inscriptions to be painted on Carriages.—By sect. 14, no stage carriage shall be used or employed, unless, nor until, there shall be truly painted in words at length, and in legible and conspicuous roman letters one inch at the least in height, and of a proper and proportionate breadth, and in a colour different from and opposite to the colour of the ground on which such letters shall be painted, and in one or more straight horizontal line or lines, upon some conspicuous part on the outside of such carriage at the back thereof, and also in the inside thereof,—and where the same shall be constructed to carry passengers in different compartments, then in each such compartment,—and so that the same shall be at all times plainly and distinctly visible and legible, the number of passengers which such carriage is constructed to carry according to the act in the whole, and on the outside, and in the inside thereof respectively, and in each such compartment. If any stage carriage shall be used or employed, without having such particulars painted thereon; or if any stage carriage shall be used or employed, having thereon, or in or on any part thereof, any words or figures, or any particulars whatever, specifying or importing, or tending or intended to specify or import, that the same is constructed, or in any way authorized, to carry a greater number of passengers in the whole, or on the outside, or in the inside thereof respectively, or in any compartment thereof, than the same is truly constructed to carry, according to the regulations of the act; the proprietor thereof shall forfeit the sum of 10*l*.

Penalty for carrying an improper number of Passengers.—By sect. 15, if the number of passengers at any one time conveyed in, upon, or about any stage carriage shall be greater in the whole, or upon or about the outside thereof, or in the inside thereof, or in any

compartment thereof respectively, than the same is constructed to carry, according to the regulations of the act, or than any particulars painted thereon shall specify in the whole, or upon the outside thereof, or in the inside thereof, or in any compartment thereof respectively; the driver and conductor or guard thereof for the time being respectively, shall forfeit the sum of 5*l*.

Constables or Passengers may measure the seats.—By sect. 16, any constable or peace officer, and also any person travelling, or having immediately before travelled, by any stage carriage, in any case where he shall have reason for believing or suspecting that a greater number of passengers are carried, or are about to be carried, or have immediately before, or at any time during the journey last performed, been carried by such stage carriage, may measure the seats, or any of the seats in or upon such carriage, in order to ascertain the length thereof respectively, or the number of passengers which the said carriage is constructed to carry; and if any person shall refuse to permit the seats to be so measured, or shall by any means or in any way prevent, or attempt to prevent, or hinder or obstruct such measurement, the offender shall forfeit for every such offence the sum of 5*l*.

Number of outside Passengers.—By sect. 17, no stage carriage, the top or roof of which shall be more than eight feet nine inches from the ground, or the bearing of which on the ground shall be less than four feet six inches from the centre of the track of the right or off wheel to the centre of the track of the left or near wheel, shall be allowed to carry in any case more than the number of outside passengers after mentioned; (that is to say), not more than five outside passengers, where such carriage shall be constructed to carry, according to the regulations of the act, not exceeding nine passengers in the whole; not more than eight outside passengers, where such carriage shall be constructed to carry in the whole exceeding nine, and not exceeding twelve passengers; not more than eleven outside passengers, where such carriage shall be constructed to carry in the whole exceeding twelve, and not exceeding fifteen passengers; not more than twelve outside passengers, where any such carriage shall be constructed to carry in the whole exceeding fifteen, and not exceeding eighteen passengers; and not more than two additional outside passengers for every three additional passengers which any such carriage shall be constructed to carry in the whole. If any greater number of outside passengers shall be carried by any such stage

carriage, than is before specified and allowed, the driver, and the conductor or guard, at the time when such offence shall be committed, shall respectively forfeit the sum of 5*l.*

Recovery of Penalties.—By *sect. 18*, nothing contained in the act is to alter the regulations of 2 & 3 Will. 4, c. 120, which are not inconsistent with the present act; and all the clauses in that act, relating to the recovery of penalties before any justice of the peace, are applicable to the recovery of penalties under this act. And any person may inform and prosecute for any penalty incurred, as well by the owner or proprietor of any stage carriage, as by the driver, conductor, or guard thereof, under this act, so far as relates to the particulars to be painted on stage carriages, or to carrying an improper number of passengers, provided the information be exhibited or the complaint made within ten days after the offence shall have been committed. Where any penalty is imposed upon the driver and conductor or guard for one and the same offence, only one prosecution shall be had or maintained for the recovery of such penalty against such driver or conductor or guard, at the option of the person prosecuting for the same.

But by *sect. 24*, all other pecuniary penalties than those above specified can be recovered only under the authority of the commissioners of the stamp office.

Evidence as to carrying Passengers.—By *sect. 19*, in any prosecutions for the recovery of any penalty relating to the carrying of passengers, or to the number of passengers which any stage carriage shall be constructed to carry, if proof be made of the due admeasurement of the height or bearing of such stage carriage, or of the seat, or any of the seats, in or upon any such carriage, or of the particulars painted thereon; the same shall be deemed and received as evidence thereof, without the production of such carriage.

1. *Information under the 5 & 6 Vict. c. 79, ss. 15 and 18, against the Driver (m) of a Stage Coach, for carrying more than the proper number of outside Passengers.*

Surrey, } Be it remembered, that on the — day of —, in the year of our Lord
to wit. } 1843, at — in the county aforesaid, A. B., of — in the said county,
gentleman, cometh before me, J. P., esquire, one of her Majesty's justices of the peace
in and for the said county, and informed me that C. D., of the parish of — in the
said county, coachman, heretofore and within the space of ten (n) days last past, to wit,

(m) A man may be convicted as the driver, although not the driver employed by the owner; *R. v. Barker*, 3 East, 504.

And see 2 & 3 Will. 4, c. 120, s. 117, as to the meaning of the term, *ante*, p. 1223.

(n) This allegation is material.

on the — day of — instant, at — in the said county, was the driver of a certain stage carriage with four wheels travelling on the Queen's highway, and employed for the purpose of conveying passengers for hire to and from London and — in the county aforesaid, and which said carriage was then and there drawn by four horses, and constructed according to law to carry twelve outside passengers, and no more (exclusive of the driver and the conductor or guard), on or about the outside of the said carriage: And that the said C. D., so being such driver as aforesaid, did then and there unlawfully at one time carry and convey upon and about the outside of the said stage carriage a greater number of passengers than the number specified in the particulars painted thereon, that is to say, thirteen outside passengers, exclusive of the driver and the conductor or guard, none of the said passengers then and there being a child or children in the lap, nor under five years of age sitting in the lap; contrary to the form of the statute in such case made and provided; whereby the said C. D. hath forfeited for his said offence the sum of 5*l*.

Taken and received by me, the day
and year first above written.

2. *Conviction of the Driver under the above Information.*

Middlesex, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, at — in the said county, C. D., of — in the said
county, coachman, was duly convicted before me, J. P., esquire, one of her Majesty's
justices of the peace in and for the county aforesaid, in pursuance of an act passed in
the sixth year of the reign of her present Majesty, intituled "An Act to repeal the
Duties payable on Stage Carriages and on Passengers conveyed upon Railways, and
certain other Stamp Duties in Great Britain, and to grant other Duties in lieu thereof;
and also to amend the Laws relating to the Stamp Duties," for that the said C. D.
heretofore, and within the space of ten days before the exhibiting of the information (o)
in this behalf, to wit, on the — day of — instant, at — in the county aforesaid,
was the driver, &c. [*state the offence as in the above information*]; for which said offence
I, the said justice, do hereby adjudge that the said C. D. hath forfeited the sum of 5*l*.
[or if the justice mitigate the penalty "and which sum of 5*l*. I do hereby mitigate to
the sum of 2*l*."], to be distributed according to the directions of the said statute in that
behalf, over and above the sum of 10*s*. for the costs and charges of A. B., the informer,
in prosecuting this conviction. Given under my hand and seal, the day and year, and
at the place first above written.

3. *Conviction of the Driver, under 2 & 3 Will. 4, c. 120, s. 43 (p), for carrying on the roof Luggage above the proper height, where the Driver did not attend before the Magistrate.*

Lancashire, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, at Manchester, in the county aforesaid, A. B. came before
me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county,
and informed me, that C. D., of — in the said county, coachman, heretofore and

(o) This allegation is material.

(p) See *ante*, p. 1219.

within the space of fourteen days (*r*) before the exhibiting of the information in this behalf, to wit, on the — day of — instant, at Bolton in the county aforesaid, he, the said C. D., then and there being the driver of a certain stage coach with four wheels drawn by four horses, and travelling on the Queen's highway, and then and there employed for the purpose of conveying passengers for hire to and from Manchester and Preston, in the said county, did then and there carry and convey, and suffered to be carried and conveyed, on the top and roof of the said stage coach, a quantity of luggage (*s*) exceeding ten feet and nine inches in height from the ground, measuring to the highest point of such luggage so being upon the top and roof of the said stage coach, contrary to the form of the statute passed in the third year of the reign of King William the Fourth, intituled "An Act to repeal the Duties under the Management of the Commissioners of Stamps on Stage Coaches, and on Horses let for Hire in Great Britain, and to grant other Duties in lieu thereof, and also to consolidate and amend the Laws relating thereto." And the said C. D., although duly summoned to answer the said charge, having neglected to appear (*t*) before me, pursuant to the said summons, or to make any defence against the said charge, I, the said justice, did proceed to examine into the truth of the said charge; and the same having been fully proved before me, upon the oath of G. H., a credible witness, it manifestly appears to me that the said C. D. is guilty of the offence charged upon him in the said information: It is therefore considered and adjudged by me, the said justice, that he, the said C. D., be convicted, and I do hereby declare and adjudge that the said C. D. hath forfeited for his said offence the sum of 5*l.* of lawful money of Great Britain, to be distributed according to the directions of the said statute, over and above the sum of — for costs and charges of A. B., the informer, in prosecuting this conviction. Given under my hand and seal, at Manchester aforesaid, this — day of —, in the year of our Lord 1843.

4. *Information against the Driver, under the 2 & 3 Will. 4, c. 120, s. 45, for refusing to stop at a Toll Gate to have the Luggage measured, &c. (u).*

Kent, } Be it remembered, that, &c. [as in form No. 1.], and informeth me, the
to wit. } said justice, that heretofore and within fourteen days (*r*) now last past, to
wit, on the — day of —, in the year aforesaid, at — in the said county, the
said A. B., being then and there a passenger travelling in a certain coach with four
wheels, drawn by four horses on the Queen's highway, and then and there employed as
a public stage carriage for the purpose of conveying passengers for hire to and from
London and Canterbury in the county aforesaid, did require and demand of C. D.,

(*r*) This allegation is material, to entitle the informer to any portion of the penalty; otherwise it is immaterial; the only consequence of not lodging the information until after the fourteen days being, that the whole penalty in that case goes to the Crown. See *sect. 106, ante*, p. 1222.

(*s*) See *sect. 117*, for the meaning of the term "luggage," *ante*, p. 1223.

(*t*) There is not perhaps any actual necessity for deviating from the general form of conviction given by the statute, notwithstanding the defendant neglects to

appear before the magistrate; for the 103rd *sect.* expressly declares, that the justice may convict, either on the appearance of the party accused, or in default thereof; and the form of conviction in the schedule makes no distinction, whether the defendant appears, or not, before the magistrate. But it is advisable, for the magistrate's protection, where a party is convicted in his absence, that the fact should appear in the conviction itself.

(*u*) See *ante*, p. 1219.

of, &c., he, the said C. D., then and there being the driver (x) of the said coach, to stop the same at the toll gate at — aforesaid, in order that the toll gate keeper of such gate might count the number of passengers upon the box, and in, upon, and about the said coach, and might measure and ascertain the height of the luggage thereupon; and that the said C. D. then and there refused and neglected to stop the said coach at the said toll gate for the purpose aforesaid, contrary to the form of the statute in such case made and provided; whereby the said C. D. hath forfeited for his said offence the sum of 5*l*.

Taken and received by me, the day
and year first above written.

5. Conviction of a Toll Gate Keeper, under the same section, for refusing to measure the Luggage, &c.

Kent, } Be it remembered, that on the — day of — in the year of our
to wit. } Lord 1843, at — in the said county, C. D., of — in the county
aforesaid, was duly convicted before me, J. P. esquire, one of her Majesty's justices of the peace in and for the county aforesaid, in pursuance of an act passed in the third year of the reign of his late Majesty King William the Fourth, intituled, "An Act to repeal the Duties under the Management of the Commissioners of Stamps on Stage Carriages, and on Horses let for Hire in Great Britain, and to grant other Duties in lieu thereof, and also to consolidate and amend the Laws relating thereto:" For that heretofore and within fourteen days (y) after the exhibiting of the information in this behalf, to wit, on the — day of — in the year aforesaid, at — in the said county, one A. B., gent., who was then and there an inside passenger travelling in a certain coach with four wheels, and drawn by four horses on the Queen's highway, then and there employed as a public stage carriage for the purpose of conveying passengers for hire to and from London and Canterbury, in the county aforesaid, did require and demand of C. D., of, &c., he the said C. D. then and there being the driver (z) of the said coach, to stop the same at the toll gate at — in the county aforesaid, in order that the keeper of such toll gate might count the number of passengers upon the box, and in, upon, and about, the said coach, and might measure and ascertain the height of the luggage (a) thereupon; and that the driver of the said coach having stopped the same for that purpose, he the said A. B., being such passenger as aforesaid, did then and there require and demand of E. F., then being the toll gate keeper at the said toll gate, to count the number of passengers upon the box, and in and about such coach, and to measure and ascertain the height of the luggage thereupon, and to sign a memorandum in writing of the number of such passengers in the inside, and on or about the outside of such coach (distinguishing the number on the box) and of the height of such luggage, and to deliver such memorandum to the said A. B.; but the said E. F., on being so requested as aforesaid, did unlawfully and wilfully refuse to count the number of such passengers, or to measure and ascertain the height of such luggage, or to sign any memorandum in writing of the number of such passengers, or of the height of such luggage, or to deliver such memorandum so signed to the said A. B., contrary to the form of the statute in such case made and provided. For which said offence, &c. [*as in form No. 2, the penalty being the same.*]

(x) See note (m), ante, p. 1228.

(y) See note (r), ante, p. 1230.

(z) See note (m), ante, p. 1228.

(a) See sect. 116, ante, p. 1223.

6. Information against the Driver, under the 2 & 3 Will. 4, c. 120, s. 47(b), for quitting his Box, before a proper person stood at the Horses' Heads.

Lancashire, } Be it remembered, &c. [as in form No. 1]: and informed me, the said to wit. } justice, that J. W., of Preston, in the county aforesaid, coachman, heretofore and within fourteen days (c) last past, to wit, on the — day of — instant, at Chorley, in the county aforesaid, he the said J. W. being then and there the driver of a stage carriage with four wheels drawn by four horses, and then and there travelling on the Queen's highway, did stop the said carriage at Chorley aforesaid, and did then and there quit the box of the said carriage, without delivering the reins into the hands of some fit and proper person, and before any fit and proper person was placed or stood at the heads of the horses, or any of them, belonging to the said carriage, and had the command of the said horses; contrary to the form of the statute in such case made and provided; whereby the said J. W. hath forfeited for his said offence the sum of 5*l*.

Taken, &c.

7. Conviction of the Driver, or Guard, under the 2 & 3 Will. 4, c. 120, s. 47, for using abusive Language to a Passenger.

Lancashire, } Be it remembered, &c. [as in form No. 5, to the end of the title of the to wit. } act of parliament]: For that the said C. D., heretofore and within the space of fourteen days (c) before the exhibiting of the information in this behalf, to wit, on the — day of — instant, at the parish of Chorley, in the county aforesaid, he the said C. D. being then and there the driver (d) [or "conductor," or "guard,"] of a certain stage carriage called "The Telegraph," then and there drawn by four horses, and travelling on the Queen's highway, and employed for the purpose of conveying passengers to and from Manchester and Preston in the county aforesaid, did unlawfully use abusive and insulting language to A. B., of — in the county of —, esquire, who was then and there travelling as an inside passenger by the said carriage; contrary to the form of the statute in such case made and provided. For which said offence, &c. [as in form No. 2, to the end, the penalty being the same.]

8. Conviction of the Driver, under the 2 & 3 Will. 4, c. 120, s. 48, for furious Driving (e).

Lancashire, } Be it remembered, &c. [as in form No. 5, to the end of the title of the to wit. } act]: For that the said C. D. heretofore and within the space of fourteen days (c) before the exhibiting of the information in this behalf, to wit, on the — day of — instant, at the parish of Garstang in the county aforesaid, he the said C. D. being then and there the driver of a certain stage coach with four wheels, called "The North Star," drawn by four horses, and travelling on the Queen's highway, and then and there employed as a stage carriage for the purpose of conveying passengers for hire to and from Manchester and Lancaster, in the county aforesaid, did wilfully and wilfully, by wanton and furious driving, endanger the safety of A. B., who was then and there an inside passenger by the said coach, and divers, to

(b) See ante, p. 1220.

(c) See note (r), ante, p. 1230.

(d) See note (m), ante, p. 1228.

(e) See ante, p. 1221.

wit, fourteen other persons who were also then and there passengers in and upon such coach, contrary to the form of the statute in such case made and provided: For which said offence, &c. [as in form No. 2, the penalty being the same.]

9. Conviction of a Guard under the 2 & 8 Will. 4, c. 120, s. 47, for neglecting to take care of a Passenger's Luggage.

Middlesex, } Be it remembered, &c. [as in form No. 5]: For that the said C. D.,
to wit. } within the space of fourteen days (g) before the exhibiting of the in-
formation in this behalf, to wit, on the — day of — instant, at Hounslow, in the
county aforesaid, he the said C. D. being then and there the guard of a certain stage
coach with four wheels, called "The Red Rover," drawn by four horses, then and
there travelling on the Queen's highway, and employed for the purpose of conveying
passengers for hire to and from London and Reading, did unlawfully neglect to take
due care of certain luggage, to wit, a portmanteau containing divers articles of wearing
apparel belonging to A. B., of — in the said county of Middlesex, gent, who was
then and there an inside passenger travelling by the said stage coach, and which said
portmanteau was then and there being carried by such stage coach; by reason of which
neglect of the said C. D., the said portmanteau and its contents became and were
wholly lost; contrary to the form of the statute in such case made and provided. For
which offence, &c. [as in form No. 2, the penalty being the same.]

10. Form of a Summons on any of the foregoing Informations.

County [or as the case may be] of —, } To E. O. of, &c.
to wit. }

Whereas an information hath been exhibited before me, J. P. esquire, one of her Majesty's justices of the peace in and for the — of —, charging that you, the above named E. O., on the — day of —, at —, did [here state the substance of the charge], whereby you have forfeited the sum of £—. These are therefore to require you personally to be and appear before me, the said justice, or before such other of her Majesty's justices of the peace for the said — as shall be then present, at —, on the — day of —, at the hour of —, in the — noon of the same day, then and there to answer the same information, and to make your defence thereto. And if you fail to appear accordingly, such proceedings will be taken as if you had personally appeared, and had not made any defence to the said charge. Given under my hand and seal, this — day of —.

11. Form of a Warrant of Distress founded on any of the foregoing Convictions.

County [or as the case may be] of —, } To the constable of —, in the —
to wit. } of —.

Whereas E. O. of, &c. has been duly convicted of a certain offence, for that [here state the offence as in the conviction], whereby he hath forfeited the sum of £— [and in case of mitigation, "which hath been mitigated to the sum of £—"] over and above the reasonable costs of the informer allowed and assessed at the sum of £—. Therefore I command you to levy the said sum of £—, and also the said sum of £—, for the costs and charges aforesaid, making together the sum of £—, by dis-

(g) See note (r), ante, p. 1230.

training the goods and chattels of the said E. O., and by seizing and taking all of the carriages, horses, harness, and other things made subject and liable by the statute in that behalf (*h*) to be seized and taken to satisfy the penalty, costs and charges aforesaid. And if, within the space of five days next after such distress taken, the said sum of £—, together with the reasonable costs and charges of taking and keeping such distress, shall not be paid, then I order and direct that you shall sell and dispose of the said goods and chattels which shall be so distrained, seized and taken as aforesaid, and shall levy and raise thereout the sum of £—, and all reasonable costs and charges of taking and keeping and selling such distress, rendering the overplus, if any, to the owner of the said goods and chattels. And you are to certify to me what you have done by virtue of this my warrant. Given under my hand and seal, the — day of —.

(Signed) J. P.

One of her Majesty's justices of the
peace for the said — of —.

12. *Form of a Warrant of Commitment for want of a sufficient Distress, founded on any of the foregoing Convictions.*

County [*or as the case may be*] of —, } To the constable of —, and to the keeper
to wit. } of the gaol [*or* "house of correction"]
at —, in the said —.

Whereas E. O. of, &c. has been duly convicted of a certain offence, for that [*here state the offence as in the conviction*], whereby he hath forfeited the sum of £— [*and in case of mitigation, "which hath been mitigated to the sum of £—"*], over and above the reasonable costs and charges of the informer allowed and assessed at the sum of £—, making together the sum of £—: And whereas it has been duly made to appear to me, that no sufficient distress can be found whereon to levy the said sum of £—: Therefore I command you, the constable of —, to apprehend and take the said E. O., and safely to convey him to the common gaol [*or* "house of correction"] at —, in the — of —, and there to deliver him to the keeper thereof, together with this warrant. And I do hereby command you, the said keeper thereof, to receive into your custody in the said gaol [*or* "house of correction"], him the said E. O., and him therein safely to keep for the space of —, unless the said sum of £— shall be sooner paid. Given under my hand and seal, the — day of —.

(Signed) J. P.

One of her Majesty's justices of the
peace for the said — of —.

Stamps.

FOR forging stamps, see *Forgery, ante*, 321.

It is not intended, under this head, to enumerate all the offences created by the stamp acts, but merely to specify such as fall within the jurisdiction of justices of the peace, and are likely to be brought before them for adjudication on summary conviction.

(*h*) By *sect.* 114, these are made liable to any penalty.

Jurisdiction of Justices.—By 10 Ann. c. 19, s. 172, two or more justices of the peace, residing near to the place where any pecuniary forfeitures, not exceeding 20*l.*, upon that or any act of parliament touching any of the stamp duties shall be incurred, or any offence against any of the same acts committed in any wise relating to the same duties, by which any sum of money only may be forfeited, have authority to hear and determine the same, and within one year after seizure made or the offence committed, to summon the party accused and the witnesses on either side, and upon conviction to issue a warrant of distress. An appeal, however, is given to the next quarter sessions. But by *sect.* 174, no *certiorari* is allowed.

Mitigation.—By *sect.* 173, the justices may mitigate any penalties, but not any reasonable costs, so as such mitigation do not reduce the penalties to less than double the duties over and above such costs.

Proceedings.—By 26 Geo. 3, c. 82, s. 5, a general form of conviction is given in all cases where any pecuniary penalty is incurred for any offence against any act of parliament then in force, or thereafter to be made, relating to the stamp duties; from which there is an appeal to the next quarter sessions, but no *certiorari*. And by 44 Geo. 3, c. 98, s. 10, no fine, penalty, or forfeiture, incurred by virtue of that or any other act relating to the stamp duties, can be recovered, unless the proceedings are in the name of the attorney-general, or of the solicitor or some other officer of the stamp duties; and by 9 Geo. 4, c. 49, s. 18, the justices, before whom any information is laid by any other person than the solicitor or some officer of the stamp office, may, on the application of the defendant, quash the proceedings, upon payment by him of such costs as to the justices shall seem reasonable.

Application of Penalties.—By 44 Geo. 3, c. 98, s. 27, all fines theretofore imposed by any act relating to the stamp duties, or by that act, are to go to the use of the crown; but the commissioners of the stamp office may, in every case in which any part of such fine is by any such act given to any informer, give him any proportion thereof.

Penalty for selling Stamps without Licence.—By 3 & 4 Will. 4, c. 97, s. 3, if any person, other than a distributor or sub-distributor of stamps, shall sell, or offer for sale, any vellum, parchment, or paper, stamped or marked with any stamp or mark denoting or pur-

porting to denote any stamp duty, or shall exchange any such stamped vellum, &c. for any other, or for any other article or thing, without having obtained and having in force a licence from the commissioners of stamps, or in or at any house, shop, or place not specified in such licence, he is liable to a penalty of 20*l.*; and if it shall appear that any such stamp was forged, then the penalty is to be doubled, and the special matter to be stated in the judgment as the cause of the increase of the penalty.

Names to be painted on Shops, &c.—By *sect. 5*, every licensed dealer must cause to be painted in Roman capital letters, one inch at the least in height, and of a proportionate breadth, on some conspicuous place on the outside of the front of his house or shop, so that the same shall be at all times plainly and distinctly visible and legible, his Christian and surname at full length, together with the words “Licensed to sell stamps,”—under the penalty of 10*l.* And by *sect. 6*, if any unlicensed person shall write, paint, or mark upon any part of his premises, either in the inside or outside, or upon any board or material exposed to public view, whether affixed to the premises or not, any word or words which shall import or signify, or be intended to import or signify, that such person is a vendor of, or dealer in, stamps; he shall forfeit 10*l.* for every day such offence shall be continued.

Penalty for opposing Search, &c.—By *sect. 9*, the commissioners of stamps, upon reasonable suspicion that any distributor or licensed dealer has forged stamps in his possession, are empowered to grant warrants to search his premises, and to break open doors, if the same shall not be opened on demand of admittance and notice of the warrant, and search for and seize all stamped vellum, &c. in his possession; and if any constable or other peace officer shall, upon request, refuse or neglect to be aiding and assisting in the execution of any such warrant, or if any person shall refuse to permit any such search or seizure to be made, or shall assault, oppose, molest, or obstruct any person acting or aiding or assisting in the execution of the warrant; he is liable to a penalty of 50*l.*

Penalty for having forged Stamps in possession.—By *sect. 11*, where any forged stamps are found in the possession of any licensed dealer, he shall be deemed to have had them, with intent to vend, use, or utter them, unless the contrary shall be satisfactorily proved, knowing them to be forged, and shall be liable to all penalties and punishments for having in possession forged stamps, knowing them

to be forged (i), unless he shall satisfactorily prove that they were procured from some distributor of stamps, or licensed dealer.

Poner of Justices to issue Search Warrants.—By sect. 13, on information given on oath before any justice, that there is just cause to suspect any person of being or having been in any way engaged or concerned in making any false or counterfeit die, plate, or other instrument, or unlawfully marking or impressing any stamp, mark, or impression on any vellum, parchment, or paper, with any such die, &c.; or in the unlawful possession of any forged or counterfeit die, &c., or of any vellum, &c., with any counterfeit stamp, mark, or impression thereon; or in unlawfully or fraudulently, or without due authority marking or impressing any lawful stamp on any vellum, &c., or in causing or procuring the same to be so marked or impressed, or in aiding, abetting, or assisting in so marking or impressing the same; or in the unlawful possession of any vellum, &c., or other material, unlawfully or fraudulently or without due authority stamped or marked; or of being or having been in any way concerned in the fraudulent erasing, cutting, scraping, discharging, or getting out, of or from any stamped vellum, &c., any matter or thing thereon written, printed, or expressed; or in the unlawful possession of any stamped vellum, &c., from, or of, or out of which any matter or thing shall have been fraudulently erased, &c.; the justice may, by warrant under his hand, cause the premises of such person, or the place where he shall be suspected of being or of having been in any way engaged or concerned in the commission of any such offence, or of secreting any such die, &c., or any such vellum, &c., or any of the machinery, implements, or tools, applicable to the commission of any such offence, to be searched. If any such matters and things are found upon such search, they may be seized and carried forthwith to the justice, who shall cause the same to be secured and produced in evidence against any person who may be prosecuted for any such offence, and afterwards they are to be delivered over to the commissioners of stamps.

Penalty for hawking Stamps.—By sect. 14, if any person, whether licensed to deal in stamps, or not, shall hawk or carry about for sale or exchange any stamped vellum, parchment, or paper; or if any person shall utter, or offer for sale or exchange, at any house, shop, or place, other than that in which he shall reside or *bonâ fide* carry

(i) See *ante*, p. 322.

on his trade, any such stamped vellum, &c., he shall forfeit 20*l.*, over and above any penalty to which he may be liable as an unlicensed dealer. Any person, without any warrant, may apprehend such offender, and take him before a justice, who shall hear and determine the matter; and if the offender shall not immediately on his conviction pay the penalty, the justice may commit him to prison for not less than one, nor more than three calendar months, unless such penalty shall be sooner paid. All stamped vellum, &c. found in the possession of such offender shall be forfeited to his Majesty, and shall be taken possession of by such justice, and be delivered over to the commissioners of stamps.

Justices may issue Warrants for seizing Stamps suspected to be stolen, &c.—By *sect. 15*, any justice having jurisdiction where any stamped vellum, parchment or paper shall be, or be supposed to be, concealed or deposited, upon any reasonable suspicion that the same has been stolen or fraudulently obtained, may issue his warrant for seizing and detaining it, and for apprehending and bringing before him the person in whose possession it shall be found; and if such person shall omit or refuse, or shall be unable, satisfactorily to account for the possession thereof, or it shall not appear that the same was purchased by him at the stamp office, or from some distributor or sub-distributor of stamps, or some licensed dealer, the same shall be forfeited to his Majesty, and shall be accordingly condemned by such justice, and thereupon delivered over to the commissioners of stamps, who shall keep the same for six calendar months. But if at any time within that period any person shall make out to the satisfaction of such justice, that the vellum, &c. so forfeited, or any part thereof, was stolen, or otherwise fraudulently obtained from him, and it shall also appear that the same was lawfully purchased by him as aforesaid, the same shall then be delivered up to him, on producing a certificate under the hand and seal of the justice that his right therein hath been duly proved. But no such certificate shall be given, unless notice in writing under the hand of such justice shall be given to the solicitor of stamps, seven clear days at the least previously to the day of hearing the claim, of the time and place appointed for such hearing.

Penalties recoverable on summary Conviction.—By *sect. 24*, any justice of the peace, having jurisdiction where the offence shall be committed, may hear and determine any offence against the act which may subject the offender to any pecuniary penalty, and upon inform-

ation given or complaint made before him by the solicitor or any other officer of the stamp office, may summon the party accused and also the witnesses on either side to appear before him or before any other justice, and either on the appearance of the party accused, or in default thereof, he may proceed to examine into the matter of fact, and upon due proof made thereof by voluntary confession of the party, or by oath of one witness, give judgment for the penalty, and award his warrant for levying any penalty, together with the costs of the proceedings and the execution of the warrant. In default of distress, the justice is required to commit the offender to the common gaol or house of correction for not less than three calendar months, and not exceeding six, unless such penalty and costs are sooner paid. An appeal is given to the quarter sessions which are held next after the expiration of ten days from the day of the conviction, upon giving notice in writing to the prosecutor or informer seven clear days previous to the first day of such sessions, and within three days next after such conviction entering into a recognizance with two sufficient sureties before such justice to enter and prosecute such appeal, and to pay the amount of the penalty and costs, and such further costs as shall be awarded in case the conviction is affirmed. No proceedings are to be quashed for want of form, or removed by *certiorari*, or by any other writ or process, into any other Court.

Mitigation of Penalties.]—By *sect. 25*, the justice may mitigate any penalty as he shall see fit; provided all reasonable costs are allowed, and so as such mitigation do not reduce the penalty to less than one fourth, exclusive of such costs.

Penalty for signing Receipts unstamped.]—By *35 Geo. 3, c. 55, s. 8*, every person who shall write or sign, or cause to be written or signed, any receipt, discharge, or acquittance for the payment of money liable to any stamp duty charged by that act, without the same being first duly stamped, or upon which there shall be a stamp of lower denomination or value than is charged in respect thereof, is liable to a penalty of *10l.* in case the sum paid shall not amount to *100l.*, and a penalty of *20l.* in case such sum shall amount to *100l.* or upwards.

Penalty for giving Receipt for less than actually paid.]—By *sect. 9*, every person who shall give any receipt, or any note, memorandum, or writing, acknowledging the payment of money, in which a less sum shall be expressed than the sum actually paid or received, or who shall separate or divide the sum demanded or actually paid

or received into divers sums, with intent to evade the stamp duty, or shall with the like intent write off any part of any debt, claim, or demand; or who shall be guilty of or concerned in any fraudulent contrivance or device whatsoever, with intent or design to defraud the Crown of any stamp duty, is liable to a penalty of 50*l*.

Who liable to the Duty.]—By 43 Geo. 3, c. 126, s. 5, any person, from whom any money shall be due or payable, and who shall have paid such money, may provide a proper receipt stamp, and demand and require of the person entitled to such money, to whom the same shall have been paid, a receipt for the same, and also the amount of the stamp duty; and if he shall refuse to give such receipt, or to pay the amount of the duty, he is liable to a penalty of 10*l*.

Penalty on Vendors of Receipt Stamps charging for the Paper.]—By 9 Geo. 4, c. 27, s. 4, if any person, upon the sale of any stamp for a receipt, shall make any charge to the purchaser for the paper whereon the same shall be impressed; or shall, under any colour or pretence whatsoever, demand or receive a greater price or sum than the amount of the stamp duty denoted by such stamp; he is liable to a penalty of 10*l*.—recoverable in the same manner as any penalty under the stamp acts.

Penalty on unlicensed Appraisers, &c.]—By 46 Geo. 3, c. 43, s. 6, no person shall appraise or value any estate or property, or effects real or personal, or any interest in possession, or reversion, remainder, or expectancy, in any estate or property real or personal, for or in expectation of hire or reward, without taking out a licence according to the provisions of that act, under the penalty of 50*l*. But by *sect. 7*, all persons duly licensed as auctioneers may act as appraisers, without taking out any other licence.

By *sect. 8*, every appraiser must write or set down in words or figures every valuation or appraisalment made by him, or any person for him, and the full amount thereof, and within fourteen days afterwards deliver the same to his employer, duly stamped according to the provisions of the act; under the penalty of 50*l*.

Penalty for receiving unstamped Appraisements.]—By *sect. 9*, no person who shall employ any appraiser to make any appraisalment or valuation shall receive, or take or pay, or make any compensation for the making of such appraisalment, unless the same shall be written or set down in words or figures upon vellum, parchment, or paper duly stamped; under the penalty of 20*l*.

Powers of former Acts extended to this.—By 55 Geo. 3, c. 184, which is the principal Stamp Act now in operation, it is provided by sect. 8, that all the powers, provisions, and penalties contained in the former Stamp Acts, as far as the same may be applicable to the duties granted by that act, shall be observed, applied, enforced, and put in execution, for the raising, levying, collecting, and securing of such duties, so far as the same shall not be superseded by, and shall be consistent with, the express provisions of that act, as fully and effectually to all intents and purposes as if the same had been therein repeated and especially enacted.

Penalty for making or accepting Bills of Exchange not duly stamped.—By sect. 11, if any person shall make, sign, or issue, or accept or pay, or cause or permit to be accepted or paid, any bill of exchange, draft, or order, or promissory note, for the payment of money, liable to any of the duties imposed by that act, without the same being duly stamped; he is liable to a penalty of 50*l*.

Penalty for post-dating Bills.—By sect. 12, if any person shall make and issue, or cause to be made and issued, any bill of exchange, draft, or order, or promissory note, for the payment of money at any time after date or sight, which shall bear date subsequent to the day on which it shall be issued, so that it shall not in fact become payable in two months, if made payable after date,—or in sixty days, if made payable after sight,—next after the day on which it shall be issued, unless the same shall be stamped for denoting the duty imposed on a bill or note for the payment of money at any time exceeding two months after date, or sixty days after sight; he is liable to a penalty of 100*l*.

Penalty for issuing or paying improper Drafts on Bankers.—By sect. 13, if any person shall make or issue, or cause to be made and issued, any bill, draft, or order, for the payment of money to the bearer on demand, upon any banker, or any person acting as a banker, which shall be dated subsequent to the day on which it shall be issued, or which shall not truly specify and express the place where it shall be issued, or which shall not in every respect fall within the exemption in favour of banker's drafts contained in the schedule, unless the same shall be duly stamped as a bill of exchange; he is liable to a penalty of 100*l*.; and the person knowingly receiving or taking the same, in payment of or as a security for the sum therein mentioned, is liable to a penalty of 20*l*. And if any banker, upon whom the same is drawn, shall pay, or cause or permit to be paid,

the sum of money therein expressed, or any part thereof, knowing the same to be post-dated, or knowing that the place where it was issued is not duly specified and set forth therein, or knowing that the same does not in any other respect fall within the said exemption; he is liable to a penalty of 100*l.*, and moreover shall not be allowed the money so paid, or any part thereof, in account against the person by whom such draft is drawn.

Promissory Notes made out of Great Britain.—By sect. 29, promissory notes for the payment of money to the bearer on demand, made out of Great Britain, or purporting to be made out of Great Britain, or purporting to be made by or on behalf of any person resident out of Great Britain, shall not be negotiable or negotiated, or circulated or paid in Great Britain, whether payable there or not, unless the same are duly stamped as the law requires for promissory notes of the like tenor and value made in Great Britain. And if any person shall circulate or negotiate, or offer in payment, or shall receive or take in payment, any such promissory note, or shall demand or receive payment of the whole or any part of the money mentioned in such note, from or on account of the drawer thereof in Great Britain, the same not being duly stamped; or if any person in Great Britain shall pay, or cause to be paid, the sum expressed in any such note, or any part thereof, either as drawer thereof, or in pursuance of any nomination or appointment for that purpose therein contained; he is liable to a penalty of 20*l.* But this clause does not extend to promissory notes made and payable only in *Ireland*.

General Form of Conviction given by 26 Geo. 3, c. 82, s. 5 (k).

Be it remembered, that on the — day of —, in the —, A. B. of — was duly convicted before me, C. D., one of her Majesty's justices of the peace for the county of — [or "before us, C. D. and E. F., two of her Majesty's justices of the peace for the county of —," *as the case shall happen to be*], in pursuance of an act passed in the — year of the reign of —, for that the said A. B., on the — day of — now last past, did [*here state the offence against the act, as the case shall happen to be*], contrary to the form of the statute in that case made and provided; and I [or "we," *as the case may be*] do declare and adjudge that he, the said A. B., hath forfeited for his said offence the sum of £— of lawful money of Great Britain, which sum of £— I [or "we," *as the case may be*] do hereby mitigate to the sum of £— [*here state the mitigated penalty, if necessary*], to be distributed as the law directs: This is the first, second, or other offence [*as the case shall happen to be*]. Given under my hand and seal [or "our hands and seals," *as the case may require*], this — day of —.

Stealing.

BY 7 & 8 Geo. 4, c. 29, s. 3, every person convicted of *simple larceny* is punishable by *Transportation for seven years, or Imprisonment not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the Court shall think fit) in addition to such imprisonment.*

For the offence of *stealing from the person*, see **Robbery**.

And see further **Larceny**, and the names or titles of the things stolen, the persons stealing, or the places from which the property is stolen.

Stiles—See **Fences**.

Stock—For forging the transfer, and falsely personating the owner of stock, see **Forgery**, *ante*, p. 309, *et seq.*

Stocking Frames—See **Frame-work Knitters**—**Manufacturers**.

Stolen Goods.

FOR the offence of receiving them, knowing them to be stolen, see **Receivers of Stolen Goods**.

And see also **Rewards for helping to Stolen Goods**, and **Search Warrant**.

By 2 & 3 Vict. c. 71, s. 24, every person, who shall be brought before any of the police magistrates of the metropolitan police district, charged with having in his possession, or conveying in any manner, any thing which may be reasonably suspected of being stolen or unlawfully obtained, and who shall not give an account to the satisfaction of such magistrate how he came by the same, shall be deemed guilty of a *Misdemeanor*, and shall be liable to a penalty of not more than 5*l.*, or to imprisonment, with or without hard labour, not exceeding two calendar months.

For the forms of proceedings, see *ante*, p. 586, 598.

Stones.

BY 2 & 3 Vict. c. 47, s. 54, (15,) every person who, within the limits of the metropolitan police district, shall, in any thoroughfare,

or public place, wantonly throw or discharge any stone or other missile, to the damage or danger of any person, is liable to a penalty not more than 40s. on conviction (by *sect. 76*) on the oath of one witness before one of the police magistrates; or, if the offence is committed in a place for which no police court is established, then before two of the county justices.

For the forms of proceedings, see *ante*, p. 598.

Stores of War, &c.

FOR firing them, see *Arson*.

For offences committed by dealers in marine stores, see *Marine Stores*. And see further *Ribers and Navigation*.

Stealing them.—By 4 Geo. 4, c. 53, every person who shall be lawfully convicted of stealing or embezzling his Majesty's ammunition, sails, cordage, or naval or military stores, or of procuring, counselling, aiding, or abetting any such offender, is liable to be *Transported for life, or not less than seven years; or imprisonment, with or without hard labour, not exceeding seven years.*

Marking stores with the King's mark.—By 9 & 10 Will. 3, c. 41, s. 1, (made a public act by 1 Geo. 1, st. 2, c. 25, s. 14,) no person, unless authorized by contracting with the commissioners of the navy, ordnance, or victualling office, shall mark any stores of war, or naval stores, with the King's mark, or any other stores with the broad arrow, on pain of forfeiting the sum of 200*l.*, with costs, one moiety to the King, and the other to the informer.

Having them in possession.—By *sect. 2*, any person, in whose possession such stores so marked shall be found, and any person concealing such stores, is liable to the same penalty, unless he shall produce a proper certificate under the hand of three of the commissioners of the navy, ordnance, or victualling board.

By 9 Geo. 1, c. 8, s. 3, persons having or concealing any timber, thick stuff, or plank, marked with the broad arrow, are liable to the same punishment, as for having or concealing any other warlike, naval, or ordnance stores.

And by 54 Geo. 3, c. 60, the provisions of the above act of 9 & 10 Will. 3, c. 41, are extended to certain cordage worked with worsted threads.

By 17 Geo. 2, c. 40, s. 10, the above offences may be tried at the

assizes or quarter sessions, and the Court may impose a fine on the offender, not exceeding 200*l.*, one moiety to the King, and the other to the informer, and commit him until payment be made; or, in lieu thereof, may cause him to be publicly whipped and committed to some house of correction to hard labour for three months, or less.

By 9 Geo. 3, c. 30, s. 5, the treasurer, comptroller, surveyor, clerk of the acts, or any commissioner of the navy, may act as a justice of the peace, in causing any persons charged with the above offences to be apprehended, committed, and prosecuted.

Selling or receiving Stores.—By 39 & 40 Geo. 3, c. 89, s. 1, every person (not being a contractor, or employed as mentioned in the above act of 9 & 10 Will. 3, c. 41) who shall willingly or knowingly sell or deliver, or cause or procure to be sold or delivered, to any person whomsoever, or who shall knowingly or willingly receive or have in his custody, possession, or keeping, any stores of war, or naval, ordnance, or victualling stores, or any goods whatsoever marked as in the above acts are expressed, or any canvass marked either with a blue streak in the middle, or with a blue streak in a serpentine form, or any bewper, otherwise called buntin, wrought with one or more streaks of raised tape, (the said stores of war, or naval, ordnance or victualling stores, or goods above mentioned, or any of them, being in a raw or unconverted state, or being new or not more than one-third worn,) and such person who shall conceal such stores or goods marked as aforesaid, shall be deemed receivers of stolen goods, knowing them to have been stolen, and are liable to be *transported for fourteen years*, unless such person shall produce a certificate under the hands of three of the principal officers or commissioners of the navy, ordnance, or victualling, expressing the numbers, quantities or weights of such stores or goods, and the occasion and reason of such stores or goods coming to his possession.

Having in possession.—By *sect.* 2, such person (not being a contractor, or employed as aforesaid) in whose possession any canvass or buntin, marked or wrought as above mentioned, shall be found, (such canvass or buntin not being charged to be new, or not more than one-third worn,) and every person who shall be convicted of any offence contrary to so much of the 9 & 10 Will. 3, c. 41, as relates to the marking or the having in possession, or concealing any of his Majesty's warlike or naval or ordnance stores, marked as therein specified, shall, besides forfeiting such stores, and the sum of 200*l.*, together with costs as therein mentioned, be corporally punished by

whipping and imprisonment, or by any or either of the said ways and means in such manner and for such space of time as to the Court shall seem meet. But the Court may mitigate the above penalty of 200*l.*

Defacing the King's mark.—By *sect. 4*, if any person shall wilfully and fraudulently destroy, beat out, take out, cut out, deface, obliterate, or erase, wholly or in part, any of the King's marks, in or to any warlike, naval, ordnance, or victualling stores, or cause, procure, employ, or direct any other person so to do, for the purpose of concealing his Majesty's property in such stores, such person shall be deemed guilty of *Felony*, and liable to be transported for fourteen years.

Second offence.—By *sect. 5*, if any person, who shall be convicted of any offence contrary to that act, for which he shall not have been transported, or contrary to the 9 & 10 Will. 3, c. 41, shall be guilty of a second offence, contrary to either act, which would not otherwise, as the first offence, subject him to transportation, he is liable to be transported for fourteen years.

Mitigation of Punishment.—But by *sect. 7*, the Court before whom any offender shall be convicted may mitigate or commute such punishment, by causing the offender to be publicly whipped, fined, or imprisoned, or by all or any one or more of the said ways and means; one moiety of which fine (if any imposed) shall be to his Majesty, and the other moiety thereof to the informer.

Searching for concealed Stores.—By *sect. 11*, commissioners of the navy, ordnance, or victualling, or any justice of the peace, upon the oath of one credible person that there is cause to suspect that any navy, ordnance or victualling stores or goods belonging to his Majesty are concealed in any dwelling-house, or other place, or on board any ship, vessel, barge, boat, or other craft, may by warrant under hand and seal, cause every such place or vessel to be searched in the day-time by any police officer, or other peace officer; and in case any stores or goods marked as before-mentioned shall upon such search be found, may cause the same and the offender to be brought before such commissioner or justice, who may commit or bind over, or otherwise deal with the offender according to law. If, upon any seizure of stores or goods marked as aforesaid, any naval, ordnance or victualling stores not so marked shall be found, which may reasonably be suspected to belong to his Majesty, the party in whose

possession the same shall be found, shall be required to give to the commissioner or justice a satisfactory account that the same were not embezzled or stolen from any of his Majesty's ships or vessels, yards, storehouses, or other places, or that if the same were embezzled or stolen, the same had come to the possession of the party honestly, and without any knowledge or suspicion that the same had been embezzled or stolen; on failure whereof by a reasonable time to be set by such commissioner or justice, the said stores or goods shall thereupon become forfeited, and such party shall be deemed and adjudged guilty of a *misdemeanor*.

Power to detain Barges and Craft.—By *sect. 12*, any person deputed or appointed by three of the principal officers or commissioners of the navy, ordnance or victualling may stop, search, and detain in some place of safety, any barge, boat, or other craft, which there shall be reason to suspect doth contain any naval, ordnance, or victualling stores, ropes, tackle, apparel, furniture, arms, ammunition, materials, and things stolen, embezzled, or unlawfully procured from or out of any of his Majesty's ships or vessels, yards, storehouses, or other places, and may also apprehend and detain any person who may reasonably be suspected of having or conveying any such stores or other things in such craft; and such person so apprehended shall be (as soon as conveniently may be) conveyed before any commissioner of the navy, ordnance, or victualling, or before a justice for the county or place in which such seizure shall be made, together with the stores and things so found in such craft; which commissioner or justice is required to commit or bind over, or otherwise deal with such person according to law, in respect to any of the stores and things which shall be marked; and in respect to any which shall not be so marked, but which shall nevertheless be reasonably suspected to be the property of his Majesty, the person on whom the same shall be found shall be required to give an account to the satisfaction of the commissioner or justice, that the same were not embezzled or stolen, as in the last section. And in case the party shall be convicted of stealing, embezzling, or unlawfully having in his possession, any marked stores or things, or shall be adjudged guilty of a misdemeanor for not giving a satisfactory account with respect to those not marked, such barge, boat, or other craft in which such stores or things, or any of them, shall be found, with its tackle, apparel, and furniture, shall, upon such conviction or adjudication, become, and be adjudged by such commissioner or justice, forfeited, and shall be disposed of in manner after-mentioned.

Power to apprehend suspected persons.—By sect. 13, any person deputed or appointed as aforesaid, or any police officer, constable, or other peace officer, or any beadle or watchman (during such time as he shall be on duty) of every parish and place where he shall be an officer, may apprehend and detain all persons who may reasonably be suspected of having or carrying, or in any ways conveying, any naval, ordnance, or victualling stores stolen or unlawfully procured, and may also seize and detain such stores in some place of safety, and as soon as conveniently may be, convey the person apprehended before any commissioner of the navy, ordnance, or victualling, or before any justice in or near to the place of seizure, together with the said stores; and the like proceedings may be had and taken against such person in respect of such last-mentioned stores, whether marked or not marked, as are above directed with respect to stores found in any craft.

Articles declared forfeited to be returned to the King's Stores.—By sect. 14, all the stores, materials, and things, which are before declared to be forfeited, on the party not giving a satisfactory account that the same were not stolen or embezzled, shall be forthwith returned into his Majesty's store. But if proof be made within three calendar months next following such seizure, to the satisfaction of the commissioner or justice, that the stores are the property of any other person, the commissioner or justice shall cause the same to be forthwith delivered up to such person, on his giving a proper receipt or discharge for the same, and paying the reasonable costs and charges (to be set by such commissioner or justice) attending the conveyance thereof to and from his Majesty's store, and the warehousing or safe custody thereof, from the time of seizure.

Barges and Craft forfeited may be sold.—By sect. 15, the commissioner or justice, by whom any barge, boat, or other craft shall be adjudged to be forfeited, is required forthwith after such adjudication to issue his warrant to the collector or other chief officer of the customs at the port at or nearest to the place where such seizure shall be made, for the sale of such barge, boat, or craft; and the collector is required within one month then next following, to cause such craft, together with its tackle, apparel, and furniture, to be publicly sold to the highest bidder; notice of which sale shall be given in some or one of the public papers in circulation in the city, town, or place where such sale shall be made; and the money arising from such sale, after payment of the reasonable expenses attending the

same, and of securing such craft from the time of the seizure thereof (to be ascertained by the commissioner or justice), shall thereupon be forthwith paid by the collector into the hands of the commissioner or justice, and be by him within one calendar month next following paid, one moiety thereof to the person who shall have made seizure of the craft, and the other moiety thereof to the treasurer of the navy (in case the stores seized shall be naval or victualling stores), to be by him applied in the same manner as the monies arising from the sale of old stores; and in case the stores seized shall be ordnance stores, then the other moiety shall be paid to the treasurer of the ordnance.

Penalty for misdemeanors.—By *sect. 16*, every person adjudged guilty of any of the *misdemeanors* aforesaid before any commissioner or justice shall for every such misdemeanor forfeit, for the first offence, the sum of 40s.; for the second offence, the sum of 5l.; and for the third and every subsequent offence, the sum of 10l., over and above the other forfeitures above-mentioned; all which forfeitures may be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of such commissioner or justice, and shall be disposed of, one moiety to the person apprehending the offender, or giving information, as the case may be, and the other moiety to the treasurer of the navy or ordnance, as the case may require. In default of distress (and until the return of the warrant, the offender is to be kept in safe custody by the order of the commissioner or justice), the offender is to be committed to the common gaol for the space of three calendar months, unless such penalty be sooner paid.

By *sect. 17*, every adjudication in any of such misdemeanors must be certified by the commissioner or justice to the next quarter sessions for the county or place in which such seizure shall be made, and such conviction shall not be quashed for want of form, nor be removed by *certiorari*, but shall be deemed and taken to be final.

Adjudication for other Offences.—By *sect. 18*, any principal officer or commissioner of the navy, ordnance, or victualling, or any justice, may hear and determine any complaint against any person (not being a contractor, or employed as aforesaid), for unlawfully selling or delivering, or for receiving, or having in his possession, or for concealing, any stores of war, or naval, ordnance, or victualling stores, or goods marked as before mentioned, of any value not exceeding 20s. The commissioner or justice, upon any information or

complaint, within three calendar months after any offence committed, may cause the party accused to be apprehended and brought before him; or if he shall have absconded, or cannot be found, then to be summoned to appear by a notice or summons left at his last or usual place of abode; and may also cause the witnesses on either side to be summoned; and the commissioner or justice, upon proof made by the oath of one witness, may give judgment accordingly, and in case the party be convicted, inflict a fine of 10*l.* upon him for his offence (which by 2 Will. 4, c. 40, s. 34, may be mitigated to any sum not less than 40*s.*), one moiety whereof is to go to the informer, and the other to the treasurer of the navy or ordnance. A warrant of distress may be issued for levying the fine; and in default of distress, the offender may be committed to the common gaol for three calendar months, unless such fine shall be sooner paid; or, in lieu of such fine, he may be imprisoned and kept to hard labour in the house of correction for three calendar months. Every commissioner or justice is required to pay over the moiety of the fine, and also the moiety of every sum arising from the sale of any craft sold under the authority of the act, into the hands of the treasurer of the navy or ordnance, within thirty days after the expiration of the year in which such fines shall be received by him, under the penalty of 50*l.*, to be recovered with double costs of suit in any of the Courts at Westminster, one moiety of which is to go to the crown, and the other to the informer.

By *sect. 20*, if, in lieu of a fine, the offender be imprisoned, the informer is to receive a reward of 5*l.* from the commissioners of the navy, ordnance, or victualling board, upon a certificate under the hand and seal of the commissioner or justice certifying the conviction and the punishment, and the name of the person entitled to such reward.

But no summary proceedings, as before-mentioned, shall be had before any justice, without the consent in writing of one or more of the commissioners of the navy, ordnance, or victualling boards; and every adjudication or sentence had or given without such consent shall be null and void.

Appeal.—By *sect. 21*, an appeal is given to the next quarter sessions from the judgment of the commissioner or justice concerning any stores under the value of 20*s.* upon entering into a recognizance with one or more sureties, to the amount of treble the value of such fine.

Conviction.—The 22nd section gives a general form of conviction, which is too imperfect to be relied on, as it contains no adjudication of the penalty. The conviction cannot be removed by *certiorari*.

Witnesses.—By *sect. 23*, if any person summoned as a witness to give evidence before the commissioner or justice, shall neglect or refuse to appear, without a reasonable cause for his neglect or refusal, he is liable to a penalty of 10*l*.

Penalty for giving false Certificates of sale.—By *sect. 25*, the commissioners are empowered to sell any marked stores, and to give the purchaser a certificate of such sale; and by *sect. 26*, if any person shall make, sign, or give any false certificate, bill of parcels, or other instrument purporting the identity or the sale or disposal of any stores, as stores so purchased of the commissioners, or shall utter or publish any such false certificate, &c. knowing the same to be false; the offender is liable to a penalty of 200*l*., and to be further corporally punished as by the act is directed with respect to persons having in possession or concealing stores contrary to the 9 & 10 Will. 3, c. 41, one moiety to go to the crown, and the other, with full costs, to the informer, to be recovered as the penalty of 200*l*. inflicted by the last-mentioned act is recoverable.

By 55 Geo. 3, c. 127, all the provisions of the above acts are extended to *all public stores* whatsoever under the care or control of any officer or person in the King's service, or employed in any public department or office, either marked with the marks in the above-mentioned acts, or with the broad arrow and the letters R. O., or with a crown and the broad arrow, or with his Majesty's arms, or with the letters G. R., to denote the property of his Majesty.

Street Act.

And see *Metropolitan Police*, *ante*, p. 572.

SURVEYORS of Pavements.—By 57 Geo. 3, c. xxix. for better paving, improving, and regulating the streets of the metropolis,—which (by *sect. 1*) extends to all the streets and public places within the cities of *London* and *Westminster*, and borough of *Southwark*, and any other parts of the metropolis included within the bills of mortality, and within the parishes of *St. Pancras* and *St. Marylebone*, with the exception of certain places after mentioned,—it is enacted by *sect. 3*, that if any person shall act as a sur-

veyor of pavements, being disqualified as therein mentioned, he is liable to a *penalty of 20l.*

By *sect. 5*, the commissioners of pavements are required to put up boards, inscribed with the names and residence of the surveyors, in conspicuous parts of every district; and if any person shall wilfully remove, destroy, or injure any of such boards, or obliterate or deface the words painted thereon, or cause or procure the same to be done; *Penalty not exceeding 30s., nor less than 15s.*

By *sect. 8*, where the pavement of any street or public place is dangerous or defective, and a notice (as therein directed) shall be given to the surveyor of the pavements of the district, then if the same shall not be sufficiently repaired within the time thereby limited, the party giving such notice may apply to two justices, and upon proof on oath by one witness of the notice, and of the defective state of the pavement, the justice may summon the surveyor to show cause why the pavement should not be repaired; in default of which the justice, upon proof by two witnesses of the defects of the pavement, may order the surveyor to pay the costs of the summons, &c. and to repair the pavement within certain specific times limited by the act, at the costs of the commissioners or trustees. If, however, the surveyor can show before the justice that the notice was not duly given, or that the pavement is not in a dangerous or defective state, then the justice may dismiss the complaint, and inflict a penalty of 40s. on the complainant, to be paid to the surveyor for his own use. Where the expense of the repairs will exceed 50l., or they cannot be completed in six weeks, then the justices may extend the time for completing the repairs.

By *sect. 9*, if any surveyor neglects to obey the summons or order of the justices,—penalty not exceeding 10l. for the first offence; 20l. for a second offence; and 30l. for a third offence; to be paid to the churchwardens or overseers of the parish for the use of the poor; and after a third offence, the surveyor to be disqualified. But all costs which the surveyor shall incur in the performance of the order of the justices, or in consequence of his refusal to perform such order by the direction in writing of the commissioners, shall be reimbursed to him by the commissioners.

Water and Gas Companies, &c.—By *sect. 11*, if any water or gas (v) company, or commissioners of sewers, shall break or take up

(v) And see *ante*, *Gas Companies*.

any pavement (except for the purpose of altering the position of, or repairing any pipes, stopcocks, or plugs, or of substituting iron for wooden mains or pipes, or of repairing, cleansing, or altering any sewer, vault, or drain) without giving three days' previous notice to the surveyor of the district; or if any gas company shall break up or disturb the pavement, without the consent of the commissioners; or if any water or gas company, who may break up the pavement for the above-mentioned purpose, shall neglect to give notice to the surveyor within twelve hours after they shall begin to do so; they shall forfeit and pay to the commissioners 40s. for every square foot of pavement so broken or taken up.

By *sect. 12*, if any water or gas company shall break or take up the pavement during the months of December, January, or February, or shall lay down any pipes of any other material than iron; *Penalty* 5*l.* for every square foot, and the like sum for every foot in length of pipe so laid down. But any water company may repair their then present pipes, which were not constructed of iron, with such materials whereof the pipes were then constructed.

By *sect. 14*, the secretaries or clerks, surveyors or inspectors, and the several turncocks employed by all the water and gas companies, any of whose pipes shall be laid beneath the surface of any street or public place, and the clerks and secretaries of any commissioners of sewers, must, within five days after their appointment, give notice in writing to the clerk to the commissioners of pavements, or to the surveyor, of their Christian and surnames, and places of abode, and of the company by whom they are appointed, and of the office or counting-house of the company, under the penalty of 10*l.*

By *sect. 15*, where any pipes or sewers are defective, the surveyor of pavements may give notice to the company or commissioners to repair the same; which must be done within forty-eight hours after such notice, to the satisfaction of the commissioners of pavements, and within twelve hours after such repairs, notice thereof must be given to the surveyor of pavements. If the water or gas company, or commissioners of sewers, shall neglect to do the necessary repairs, or to give such notice to the surveyor; *Penalty, for the first offence* 5*l.*, *for the second offence* 8*l.*, and *for a third offence* 10*l.*

By *sect. 17*, where it shall happen that any pipe shall not belong to the water or gas company, to whom any notice has been given to repair the same, then the company, to whom such notice has been given, must, within twenty-four hours, cause a notice to be given in the same manner before directed to the company to whom the pipe

shall belong; which last-mentioned company shall reimburse the other company all costs and charges of taking up the pavement and opening the ground, and shall obey the directions of the act in all respects as if the original notice had been given to them. If the first-mentioned company shall not give the required notice to the company to whom the pipe belongs, *Penalty 5l. for a first offence, 8l. for the second, and 10l. for the third.*

By *sect. 17*, the repairs and works by such companies or commissioners of sewers must be executed within such reasonable time as the commissioners of pavements shall direct, and all pipes, materials or things, which shall have been placed on the surface of the street, must be removed within forty-eight hours after notice given by such commissioners, under the same penalties as in the last section.

By *sect. 18*, all dirt, gravel, filth, rubbish, and other things, placed or occasioned by the repairs or other works of any water or gas company, or commissioners of sewers, by the taking up of the pavement, or by opening the ground beneath the surface of any street, must be removed with all practicable expedition, and within twenty-four hours after notice from the commissioners or surveyor of pavements.

By *sect. 19*, during the continuance of any repairs, there must be placed such posts, rails, bars, or ropes, lanterns, and watchmen, for the prevention of accidents, as the trustees or surveyor of pavements may require; under the *penalty of 5l.*

By *sect. 21*, no water company shall place or set up any stand-cock or pump for the supply of water in times of frost, which shall be furnished with any other than a metal cock and spout, to the satisfaction of the surveyor of pavements; under the *penalty of 20s.*

Paving Rates.—By *sect. 27*, if any clerk, collector, or other person having the custody of the books of rates for the relief of the poor, or for the land or assessed taxes, shall neglect to produce such books when required by the clerk of the commissioners of pavements, for the purpose of ascertaining the names of the persons liable to be assessed to the paving rates; *Penalty 5l.*

Enforcement of Rates.—By *sect. 35*, if any person refuse or neglect to pay the paving rate assessed upon him under the act, he may be summoned before a justice, and in default of his attendance, or if he shall not show sufficient cause that he is not chargeable, the rate and the costs of the summons, &c. may be levied by distress; in default of which he may be committed not exceeding one calendar

month. And by *sect. 40*, rates may also be recovered from persons removing by a warrant of distress, which may be backed by a magistrate of any other county.

Constables.—By *sect. 36*, any constable who shall refuse or neglect to aid or assist in making a distress, pursuant to the warrant of a magistrate, *Penalty 5l.*

By *sect. 37*, a general form is given of a warrant of distress.

Officers not accounting, &c.—By *sect. 45*, if any treasurer appointed by the commissioners of pavements shall neglect to account for monies received, he is liable to the same penalty as a collector for not accounting. And by *sect. 47*, where any collector does not duly account, the commissioners may complain to a justice, who may issue a warrant to bring the party before him, and if he does not then account for monies which may appear to have come to his hands, the amount may be levied by distress; in default of which he may be committed, until he shall render an account and pay all monies received by him, but not for a longer period than twelve calendar months.

By *sect. 48*, if any collector retain money to the amount of 20*l.* in his hands, without paying it over to the treasurer, *Penalty 20l.*

By *sect. 50*, if any treasurer, surveyor, or inspector of the pavements, or collector, shall accept any fee or reward, other than such as are allowed by the act, or shall be concerned in any bargain or contract made with the commissioners or trustees by whom he shall be appointed; *Penalty 20l.*, and in the last case he is also disqualified from holding his employment.

Removing Pavements.—By *sect. 53*, if any person, except water and gas companies and the commissioners of sewers, shall take or break up, or wilfully damage any pavement, or make any alteration therein, without the consent of the commissioners of pavements or their surveyor; *Penalty not less than 5l., nor more than 10l.*

Commissioners may order New Pavements.—By *sect. 54*, the commissioners may survey the pavements of all streets and public places, which may not have been previously paved under any local act, or under their own authority, and give notice to the owner or occupier of the adjoining property to pave, re-pave, or repair the foot and carriage pavements abutting on such property; and if he does not, the commissioners may do so at his expense, and after the amount of the expenses has been certified to him, the same must be

paid by him, within three days, to the surveyor of pavements; under the penalty of double the amount, recoverable in the same manner as any money from the water and gas companies.

Sewers and Drains.—By sect. 55, the commissioners of sewers are bound to make and repair the grates, and cleanse and empty the sewers, whenever required by the commissioners of pavements, who, in case of their neglect, may do what is needful, and recover the charges in the same manner as the charges of re-laying pavements may be recovered.

By sect. 57, private drains must also be cleansed, on notice by the commissioners of pavements to the owner or occupier of the house to which the drain belongs; and in case of his neglect, the commissioners may direct the same to be cleansed, and may recover the charges in the same manner as those for re-paving or repairing any pavements.

Injuring Posts, &c.—By sect. 58, if any person shall wilfully or carelessly knock down, break, damage or injure any posts or rails set up by the commissioners; *Penalty not less than 40s. nor more than 10l.*

Scavengers and Dust Contractors.—By sect. 59, the scavengers appointed by the commissioners must, on a certain day in every week, take and carry away from the respective houses of the inhabitants their soil, ashes, cinders, rubbish, dust, dirt, and filth, under the penalty of 40s. for every neglect;—except all such as shall be occasioned by building, repairing, or altering any house or building, or cleansing or repairing any drain, which must be carried away at the charge of the owner or occupier within twelve hours after the same shall be left in any street or public place, under the penalty of 5l. And if any person shall refuse to permit such other soil, ashes, &c. to be taken away by the proper scavengers, he incurs the like penalty.

By sect. 60, if any other person than the contractor remove the dust, &c. a justice, on complaint, may grant a warrant against him; and any person, who shall see the offence committed, may seize the offender, together with the horses, carts, &c. made use of for carrying the same away, and convey him before a justice; if convicted, penalty for the first offence 10l., for the second 15l., and for the third 20l., one half the penalty to go to the informer, and the other to the dust contractor. If penalty not paid, the horses and carts may be

sold, and if the sale deficient, commitment to hard labour not exceeding thirty days.

By *sect. 61*, on the neglect of the contractor to remove the dust for seven days, it may be removed by any other person, after twenty-four hours' notice given to the contractor.

By *sect. 62*, no scavenger shall sweep any slop, mud, &c. over any grate placed above any common sewer, under the penalty of 5*l.*

Footways.—By *sect. 63*, every occupier of any house, tenement, warehouse, shop, shed, coachhouse, stable, chapel, meeting house, or other public or private building, during the continuance of frost, or after or during the fall of snow, must once in every day, before ten o'clock in the forenoon, except Sunday, sweep and cleanse the footway all along the front, side, or back walls of their respective houses, &c. under a penalty not exceeding 10*s.* The owner of any house let furnished, or in divided apartments, is to be deemed the occupier. But see *ante*, *Metropolitan Police Act*, 2 & 3 Vict. c. 47, s. 60, § 6, which contains a more efficient provision as to cleansing and sweeping footways.

The 64th and ten following sections impose penalties not less than 40*s.*, nor more than 5*l.*, for various nuisances, which are specified in the *Metropolitan Police Act*, the only material difference being, that a less penalty is there imposed.

Erecting Hoards.—By *sect. 75*, no person shall set up any hoard or scaffolding, or place or erect any posts, bars, rails, boards, or other thing, by way of inclosure, for the purpose of making mortar, or of depositing or sifting, screening, or slacking any brick, stone, sand, or any other materials for building or repairing any house or erection, or for any other purpose, without leave of the surveyor of the pavements, which he is required to grant on the payment of a fee of 2*s.* 6*d.*, specifying therein the length of time for which the hoard may be continued, and giving such other directions as may be necessary. For acting contrary to this provision, or setting up the hoard in any other manner, or continuing it for any longer time than expressed in such licence,—*penalty* 10*s.* for every day, and the surveyor may cause it to be pulled down, and sold to satisfy the penalties incurred.

Numbers of Houses, and Names of Streets.—By *sect. 76*, the commissioners of pavements may direct the houses in the streets to be numbered, and the names of the streets to be painted on a conspicuous part of any house at the corner of the street; and if any one

shall wilfully destroy, injure, obliterate, or deface any such number or name, penalty 40s.; and the owner or occupier of any house is required, on notice from the surveyor, to cause the same to be repainted within three days, under a penalty not less than 10s., nor exceeding 20s. for each day after the expiration of such notice.

Watering Streets.—By *sect. 77*, the streets may be watered by direction of the commissioners of pavements, and wells and pumps sunk and erected for that purpose, the expense of which may be defrayed by special rates upon the inhabitants and occupiers, to be collected and enforced in the same manner as the paving rate. But by *sect. 78*, no such rate is to be made, until three-fourths of the inhabitants of any street request the same to be watered.

Stopping up Courts, &c.—By *sect. 79*, any court, alley, or place may be stopped up by the order of two justices at a special session, with the consent of the commissioners of pavements, and with the consent of the owners of tenements adjoining to four parts in five in the length of any such court.

Witnesses.—By *sect. 121*, inhabitants or owners or occupiers of property in parishes are competent witnesses.

Obstructing Surveyor, &c.—By *sect. 122*, if any person shall wilfully obstruct, hinder, or molest the commissioners or any surveyor of pavements, or other officer or person appointed or employed by them; *penalty* for the first offence 5*l.*, for the second 10*l.*, and for the third 20*l.*

By whom Complaints to be preferred.—By *sect. 123*, a justice may proceed, on the complaint of any one of the commissioners of pavements, or their surveyor, or clerk, or of any person whom two commissioners may appoint for that purpose.

What Justices may act.—By *sect. 125*, any justice may act, although he be an inhabitant of any parochial district, or liable to the payment of rates.

Allowance to Informers.—By *sect. 126*, a justice, before whom an offender is convicted, may, with the consent of the commissioners or their officer, order an allowance of part of any penalty, not exceeding one half, to the informer, and the remainder of the penalty, unless otherwise directed by the act, is to be paid to the commissioners in aid of the paving fund.

Production of Deeds and Witnesses.—By *sect. 127*, a justice

may require the production of any deeds, instruments, or papers in the custody or power of any person appealing to him, which in his judgment may be necessary to illustrate the subject of any such appeal. And by *sect. 128*, he may issue a summons to require the attendance of witnesses; and if, upon tender of such sum as the justice shall think reasonable for their costs, they shall neglect to appear, or refuse to be examined; penalty, not less than 5*l.*, nor more than 10*l.*

Service of Notices, &c.—By *sect. 129*, all notices and summonses may be served by leaving them at the usual or last known warehouse, manufactory, office, or counting house, of the party, or with any of his partners, tenants, clerks, or servants, at his last or usual known place of abode, or at or upon any premises belonging to or occupied by the party, or whereunto any such notices or summonses may relate.

Recovery of Penalties, &c.—By *sect. 130*, all penalties may be recovered, within three calendar months after the offence, before *one justice*, on the oath of *one witness*, (and the informer is declared to be in every case a competent witness) and may be levied by distress; in default of which, commitment not exceeding six calendar months.

By *sect. 131*, a general *form of conviction* is given.

By *sect. 132*, no *distress* is to be deemed unlawful for want of form; and by *sect. 133*, an *appeal* is given to the next sessions, if not held within seven days after the conviction, and in that case to the next succeeding sessions.

By *sect. 135*, no proceeding to be quashed for want of form, or removed by *certiorari*.

Exemptions from Act.—By *sects. 139, 140*, the act is not to extend to the estates of the Marquis *Camden*, or Lord *Sommers*, in the parish of *Saint Pancras*, nor (by *sect. 143*) to the parishes of *Islington* or *Hackney*, nor (by *sect. 146*) to the collegiate church of *Saint Peter, Westminster*, or the immediate close thereof, nor (by *sect. 147*) to any turnpike road.

London.—By 4 Geo. 4, c. cxiv. similar provisions to those contained in the above act are enacted for paving, cleansing, and lighting the streets and other places within the *City of London*; but it takes no notice of the 57 Geo. 3, c. cxxix., although the last mentioned act is expressly declared to extend to all streets *within the Cities of London and Westminster*.

Form of Conviction for a Penalty under the above Act.

Middlesex, } Be it remembered, that on this — day of —, in the year of our
to wit. } Lord —, A. B. is duly convicted before me [or “us,”] — of her
Majesty’s justices of the peace in and for the [“city,” “borough,” or “county,” as
the case may be,] of having [here state the offence, as the case may be,] contrary to the
form of the statute [or “of certain statutes,” as the case may be,] in that case made
and provided: And I [or “we,” as the case may be,] do declare and adjudge that the
said A. B. hath forfeited for his said offence the sum of —, and also the sum of —
for the costs, charges and expenses already incurred thereabouts. Given under my
hand and seal [or “our hands and seals,” as the case may be,] the day and year first
above written.



Summons.

BEFORE a party is convicted by a magistrate of any offence, or ordered to do any act, or to pay any money, it is absolutely necessary that he should be summoned to appear and answer to the complaint, unless he appears of his own accord, or is brought before the magistrate by the more stringent proceeding of a warrant (*l*); which last proceeding is, in general, only proper in cases connected with a breach of the peace. And in all proceedings for a penalty, although a summons may be dispensed with by a statute, it is but reasonable that the first process should be by summons to attend and show cause (*m*).

Where a particular form of summons is required by a statute, the same should be adopted (*n*). The summons should state the substance of the charge or complaint, and may be directed either to the party himself, requiring him to appear,—or to some constable or peace officer, requiring him to summon the defendant. It should also name a certain time and place (*o*) for the defendant’s appearance; and the time mentioned should be a reasonable time allowed him for making his defence; for where a party was convicted, upon his default of appearance to a summons which required him to appear immediately upon the receipt of it, the conviction was held bad (*p*). And even where a summons was to appear in the course of the same day, it was held that an objection to the summons was only removed by the fact of the defendant having actually appeared, and so waived any irregularity in the notice (*q*). If the summons

(*l*) When a summons should be issued against a party in the first instance, and when a warrant, see *Justices, ante*, p. 500, and *post*, *Warrant*.

(*m*) *R. v. Martyr*, 13 East, 55.

(*n*) *R. v. Croke*, Cowp. 30.

(*o*) *R. v. Simpson*, 1 Stra. 46.

(*p*) *R. v. Mallinson*, 2 Burr. 679.

(*q*) *R. v. Johnson*, 1 Stra. 261.

requires the defendant to appear on an impossible day, it will be the same as if there had been no summons; as where he was summoned to appear on *Tuesday*, the 17th April, and the 17th April fell on a *Friday*, and not on Tuesday (*r*). It is usual, and upon many accounts convenient, to fix not only a day, but a particular time of the day, for the appearance of the party; but if he appear at the time, and the justices do not attend at the exact time fixed, he ought not to go away, but must wait a reasonable time; for many things may happen to hinder the immediate attendance of the magistrates. The summons also must not bear date on a day earlier than that on which the information was laid; if it does, it will be bad (*s*). It should be signed by the justice by whom it is issued (*t*), but need not be under his seal, unless a statute so expressly requires it. And by 3 Geo. 4, c. 23, s. 2, although a statute may require two justices to hear and determine any complaint, yet *one* justice may take the information, and issue the summons, requiring the party to appear before them.

Service.—It is necessary, in general, that the summons should be served *personally* on the defendant (*u*), unless where personal service is dispensed with, as is frequently the case, by particular statutes,—in which case the delivery may be to a person on the premises, apparently residing there as a servant (*x*). Where the summons is directed to the constable, a copy of it should be served upon the defendant; but if directed to the party himself, the original should be served upon him, and a copy of it kept by the party serving it.

If the summons be not duly served, or be defective in any of the above particulars, the party commits no default by not appearing, and the magistrate ought not to proceed in his absence upon such a defective summons; and if he does so proceed, knowing of the defect, he will make himself liable to an information (*y*).

The foregoing rules, however, only apply to those cases where the defendant does not in fact appear before the magistrate; for if he actually appears and pleads, there is no longer any question upon the sufficiency or regularity of the summons (*z*).

(*r*) *Reg. v. Dyer*, 1 Salk. 181.

(*s*) *R. v. Kent*, 2 Lord Raym. 1546.

(*t*) *R. v. Stevenson*, 2 East, 365.

(*u*) *Reg. v. Simpson*, 10 Mod. 345;
R. v. Hall, 6 D. & R. 84.

(*x*) *R. v. Chandler*, 14 East, 268.

(*y*) *R. v. Allington*, 1 Stra. 678; *R. v. Venables*, 2 Lord Raym. 1407.

(*z*) *R. v. Johnson*, 1 Str. 261. And see Deacon's edition of Paley on Conviction, 34, *et seq.*

1. *General Form of a Summons directed to the Constable*

County of } To the constable of —, in the county of —.

Whereas information and complaint on oath have been made before me, J. P. esq., one of her Majesty's justices of the peace in and for the said county, that C. D. of —, in the county aforesaid, labourer, on the — day of — now last past, at —, in the county aforesaid, did [*here set forth the nature and circumstances of the complaint, as far as it is necessary to show the offence, and bring it within the authority of the justice; and in doing so, follow the words of the statute as near as may be.*] These are therefore to require you forthwith to summon the said C. D. before me [*or "such other of her Majesty's justices of the peace as shall be then present"*] at —, in the said county, on —, the — day of —, at the hour of — in the — noon of the same day, to answer to the said information and complaint, and to be further dealt with according to law. And be you then there to certify what you shall have done in the premises. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord 1843.

J. P.

2. *General Form of a Summons directed to the Defendant himself.*

County of } To A. B. of —.

Whereas information and complaint on oath have been made before me, J. P. esq., one of her Majesty's justices of the peace for the said county, that C. D. of, &c. at, &c. did, &c. [*follow the directions in the above form.*] These are therefore to require you to appear personally before me [*or "such other of her Majesty's justices of the peace for the said county as shall be then present"*] on the — day of — next, at the hour of — in the — noon, to answer the said information and complaint, and further to do and receive what to the law shall appertain. Herein fail you not. Given under my hand and seal, this — day of —, 1843.

3. *Summons of a Witness.*

County of } To the constable of —.

Whereas information hath been made before me, J. P. esq., one of her Majesty's justices of the peace in and for the said county, that [*here set forth the substance of the complaint*]; and that A. B. of —, in the said county, —, is a material witness to be examined concerning the same. These are therefore to require you to summon the said A. B. to appear before me [*or "such other of her Majesty's justices of the peace as shall then be present"*] at —, in the said county, on the — day of —, at the hour of — in the — noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal, the — day of —, in the year of our Lord 1843.

Sunday.

UNLAWFUL Games.—By 1 Car. 1, c. 1, s. 1, there shall be no meetings, assemblies, or concourse of people out of their own

parishes on the Lord's Day, for any sports and pastimes whatsoever; nor any bear baiting, bull baiting, interludes, common plays, or other unlawful exercises and pastimes used by any person or persons within their own parishes; and every person offending in any of the premises shall forfeit for every offence 3s. 4d., the same to be employed and converted to the use of the poor of the parish where such offence shall be committed; and if any one justice of the peace of the county, or the chief officer or officers of any city, borough, or town corporate, where such offence shall be committed, upon his or their view, or confession of the party, or proof of any one witness upon oath, shall find any person offending in the premises, the said justice or chief officer or officers shall give warrant under his or their hand or seal to the constables and churchwardens of the parish where such offence shall be committed, to levy the penalty by distress and sale of the goods of the offender; and in default of such distress, the party offending shall be set publicly in the stocks for the space of three hours.

Carriers, &c.—By 3 Car. 1, c. 2, s. 1, no carrier with any horse, nor waggonmen with any waggon, nor carmen with any cart, nor wainman with any wain, nor drovers with any cattle, shall by themselves or any other, travel upon the Lord's Day, upon pain that every person so offending shall forfeit 20s. for every such offence; and if any butcher by himself, or any other for him by his privity or consent, shall kill or sell any victual upon the said day, then every such butcher shall forfeit for every such offence the sum of 6s. 8d. If any of such offences be done in view of any justice, mayor, or other head officer of any city or town corporate within their limits respectively, or be proved upon oath by two or more witnesses, or by the confession of the party, the above penalties may be levied by any constable or churchwarden, by warrant from any such justice, mayor, and other head officer, where such offence shall be committed, by distress and sale of the offender's goods; or shall be recovered by any person that will sue for the same in any court of record; all which forfeitures are to go to the poor of the parish where the said offences shall be committed, saving only that the justice may, out of the said forfeitures, reward the informer according to his discretion, so that such reward exceed not the third part of the forfeiture. The conviction must be in six months after the offence committed.

Under this statute it has been held, that the driver of a van

travelling to and from distant towns, as London and York, is a carrier within the meaning of the act, and liable to the penalty for driving on a Sunday, although the driver of a stage or mail coach may not be so liable (a). So that it would seem, that the meaning of the word "carrier" in the statute is to be confined strictly to a carrier of goods, and not to the driver of a carriage conveying only passengers.

Tradesmen exercising their Callings.—By 29 Car. 2, c. 7, s. 1, no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business, or work of their ordinary callings upon the Lord's Day, or any part thereof (works of necessity and charity only excepted); and every person, being of the age of fourteen years or upwards, offending in the premises, shall, for every such offence, forfeit the sum of 5s.; and no person whatsoever shall publicly cry, show forth, or expose to sale, any wares, merchandizes, fruit, herbs, goods, or chattels whatsoever upon the Lord's Day, upon pain of the forfeiture of the goods.

Drovers, Waggoners, &c.—By sect. 2, no drover, horse-courser, waggoner, butcher, higgler, their or any of their servants, shall travel or come into his or their inn or lodging upon the Lord's Day, or any part thereof, upon pain that each and every such offender shall forfeit 20s. (b) for every such offence.

And if any person offending in any of the premises shall be thereof convicted before any justice of the county, or the chief officer or any justice of or within any city, borough or town corporate, where the said offence shall be committed, upon his view, or confession of the party, or proof of any one witness by oath, the said justice, &c. shall give warrant under his hand and seal to the constables and churchwardens of the parish where such offence shall be committed, to seize the said goods cried, showed forth, or put to sale as aforesaid, and to sell the same, and to levy the other forfeitures or penalties by way of distress and sale of the goods of every such offender; and in default of such distress, or in case of insufficiency or inability of the offender to pay the said forfeitures or penalties, then the party offending be set publicly in the stocks for the space of two hours. All the forfeitures or penalties are to go to the use of the poor of the parish where the offence shall be committed, saving only

(a) *Ex parte Middleton*, 3 B. & C. 164.

(b) The act also imposed a penalty of 5s. for travelling with any boat, wherry, lighter or barge on the Lord's Day; but this penalty is repealed by the 7 & 8 Geo. 4, c. lxxv. See *post*, *Chambers*.

that the justices may reward the informer according to their discretion, so as such reward exceed not the third part of the forfeiture or penalty.

Exemptions.—By *sect. 3*, nothing in the act contained shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cooks' shops, or victualling houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning or after four of the clock in the afternoon. And by *sect. 4*, no person can be prosecuted unless within ten days after the offence committed.

Under this last statute, it has been held that its provisions do not extend to the owner and driver of a stage coach; for that the words "other person," contained in the 1st section, cannot be extended beyond persons *ejusdem generis* with the persons previously specified; and that therefore neither of the above statutes rendered it illegal for stage coaches to travel on the Lord's day (*c*).

The prohibition contained in the 1st section also extends only to such work, business, or contract, as is done or made in the "ordinary calling" of the party, and not to the sale of any thing which is not within his *ordinary calling* (*d*). It has been also held, that baking provisions for customers is within the exemption contained in the 1st section, as to works of necessity,—and also within the equity of the exemption in the 3rd section, as to cooks' shops; there being the same reason that a baker should bake for others, as that a cook should roast and boil for them; and the Court said, that it was better that one baker and his men should stay at home, than many families and servants (*e*). But baking and selling rolls on a Sunday is within the act, and does not come within any of the exceptions (*f*). In all these cases, however, of trading on a Sunday, there can be only one penalty incurred on the same day; for the exercise of a man's ordinary business on that day constitutes one entire offence, and whether longer or shorter in point of duration, or whether it consists of one or a number of particular acts, makes no difference (*g*).

There are some statutes which exempt certain dealings and occupations from the penalties under the above acts; as the 10 & 11

(*c*) *Sandiman v. Breach*, 7 B. & C. 96.

(*d*) *Drury v. Defontaine*, 1 Taunt. 131.

(*e*) *R. v. Cox*, 2 Burr. 787; *R. v. Younger*, 5 T. R. 449,

(*f*) *Crepps v. Dunder*, Cowp. 640.

(*g*) *Ibid.* But see *ante*, p. 109, as to the restrictions on bakers trading on a Sunday.

Will. 3, c. 19, ss. 26, 27, which allows mackarel to be sold on Sundays before or after divine service; the 2 Geo. 3, c. 15, s. 7, which permits *fish* carriages to travel on Sundays; the 1 & 2 Will. 4, c. 22, s. 37, which allows hackney coaches to ply for hire on a Sunday; and the 7 & 8 Geo. 4, c. lxxv., above mentioned (*h*), which enables watermen on the Thames, under certain restrictions, to ply and work on a Sunday.

As to the violation of the Sabbath by opening houses for public entertainment or amusement, see *ante*, *Disorderly House*.

As to regulations on that day to be observed by alehouse keepers, see *Alehouses*, *ante*, pp. 21, 28.

As to the penalties for killing game on a Sunday, see *Game*.

Warrant on the stat. 3 Car. 1, c. 1, to levy a Penalty on a Carrier for travelling on the Lord's Day.

County of ——. To the constable of —, in the said county, and to the churchwardens of the parish of —, in the said county.

Forasmuch as A. B. of —, in the said county, carrier, is duly convicted before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, for that he, the said A. B., on the — day of —, in the year of our Lord 1843, being the Lord's day, commonly called Sunday, did, with divers, to wit, two horses, travel into and through the said parish of —, contrary to the statutes in that case made and provided; whereby he hath forfeited the sum of 20s. of lawful money of Great Britain: These are therefore to command you forthwith to levy the said sum of 20s., by distraining the goods and chattels of him the said A. B.; and if within the space of five days next after such distress by you taken, the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do pay the sum of 6s. 8d., part of the said sum of 20s., to C. D., of —, yeoman, who informed me of the said offence; and that you see the remaining sum of 13s. 4d. employed to the use of the poor of your said parish of —, returning to him the said A. B. the overplus upon demand, the reasonable charges of taking, keeping and selling the said distress being first deducted. And you are to certify to me, with the return of this precept, what you shall have done in the execution thereof. Herein fail you not. Given under my hand and seal at —, in the said county, the — day of —, 1843.

J. P.

Surety for the Peace.

FOR what cause granted.—Any justice of the peace may, by virtue of his commission, cause all persons to come before him who have used threats to any of the King's subjects concerning their bodies, or the firing of their houses, and may compel them to find suf-

(*h*) See note (*b*), *ante*, p. 1264.

ficient security for the peace or their good behaviour towards the king and his people, and if they refuse to do so, cause them to be kept in the king's prison until they find such security. Therefore, whenever a private individual has just cause to fear that another will burn his house, or do him a corporal injury by killing, imprisoning, or beating him, or that he will procure others to do so, he may demand surety of the peace against such person; which every justice is bound to grant, if the party makes oath that he is actually under fear of death or bodily harm, and will shew that he has just cause to be so by reason of the other's menaces, attempts, or lying in wait, and will also swear that he does not require such surety out of malice or mere vexation. This is called *swearing the peace* against another; and if the party does not find such sureties, he may be immediately committed till he does.

The menaces or threats need not be in words, but may be by looks or gestures, or may be inferred from the conduct of the party. This inference, however, must be drawn by the complainant himself, and if he omit to state it in the articles or information, the Court of Queen's Bench will not draw the inference. The complainant therefore must positively swear to his belief, that the conduct of the defendant amounted to a threat of personal violence (*i*). He may allege, as a part of his ground for apprehension, misconduct, which has been the subject of former articles, although the accused party was committed on those articles for want of sureties, and discharged on *habeas corpus*; and a commitment on such new articles or information will not be contrary to the Habeas Corpus Act, 31 Car. 2, c. 2, s. 6(*k*). If the complainant alleges, as the ground of fear, expressions in a letter, which he submits to the magistrate for his construction, the whole letter ought to be set forth in the information; for if the proceedings are removed into the Court of Queen's Bench by *habeas corpus*, the Court will not take the words into consideration, nor act upon the information, unless the whole letter is set out (*l*). And, in judging whether there are sufficient grounds to require a man to find sureties for keeping the peace towards another, the magistrate may look to the rank of the parties, and their station. Therefore, where a person in the higher classes of society swears to his apprehension, that the defendant, who is in the same sphere of life as himself, will *make him, the complainant, commit a breach of the peace*; and the cause for such apprehension is a declaration of the

(*i*) *Reg. v. Dunn*, 12 Ad. & E. 599.

(*k*) *Ibid.*

(*l*) *Ibid.*

defendant that he would do every thing in his power to annoy the complainant, short of actual violence; this is quite sufficient to require the defendant to find sureties; for a magistrate would be a poor guardian of the public peace, if he could not interfere until an actual outrage had taken place, and perhaps fatal consequences ensued (*m*). If a man shall threaten to hurt the wife or child of another, the latter may crave the peace at the justice's hands; but not where he fears only that another will hurt his servants, or his cattle, or his goods (*n*); for in the one case, it should be the servant's fear, and not the master's, and the servant's own oath before the justice is necessary; and in the latter case, his goods may be injured, without a breach of the peace; and the recognizance also, when taken, is only that the party shall keep the peace towards the king and all his liege people. Nor ought the surety of the peace to be granted, unless there is a fear of some present or future danger, and not merely for a battery or breach of the peace that is past; in which last case the proper course is to bind over the party to answer to any indictment that may be preferred against him.

A justice may also demand sureties of the peace from any person, who in his presence makes an affray, or threatens to beat or kill another; or from persons who contend together with hot and angry words, or go about with unusual weapons or attendants, to the terror of the people; from all such as he knows to be common barretors, or such as are brought before him by the constable for a breach of the peace in his presence; and from all such persons as (having been before bound to keep the peace) have broken it and forfeited their recognizance (*o*). And where a magistrate, in the exercise of his discretion, thinks there is ground for requiring a party to enter into a recognizance to keep the peace, the Court of Queen's Bench will not interfere with his discretion (*p*).

At whose request, and against whom.—All persons under the king's protection, being of sane memory, whether they be natural-born subjects or aliens, have a right to demand surety of the peace; a wife may demand it against her husband, and the husband against his wife (*q*). But infants, and *fèmes coverts*, ought to find security by their friends, and not to be bound themselves. And a peer, or

(*m*) *R. v. Stanhope*, 12 Ad. & E. 620,
note (*b*).

(*n*) *Dalt. c. 116.*

(*o*) 1 Hawk. c. 60, s. 6, *et seq.*

(*p*) *R. v. Tregarthen*, 5 B. & Adol.
678.

(*q*) 1 Hawk. c. 60, s. 2.

peeress, cannot be bound over in any other place than the Courts of Queen's Bench or Chancery (*r*).

How granted.—If the offending party be present at the time of the complaint made, he may be required at once to enter into the requisite recognizance; but if he be absent, the justice may make out a warrant to bring the party before him, showing the reason for which the warrant is granted, and at whose suit; and this warrant may be executed in the same way as any other criminal process (*s*). If surety for the peace be taken upon an original complaint before the justice, it may be regulated by his discretion, both as to the number and efficiency of the sureties, the amount of the sum, and the period for which the party shall be bound (*t*); but the usual course is to bind the party, to appear at the next quarter sessions, and in the meantime to keep the peace, as to the Queen and all her liege people, especially to the party claiming the security. If, however, the justice be ordered to take surety from the party by writ from either of the Courts above, he must then be wholly governed by the directions of such writ. In the latter case, the justice need not certify the recognizance to the superior Court, until he receive a writ of *certiorari* for that purpose; in the former case, he must certify it to the next quarter sessions, without any requisition, in order that the party bound by it may be there called to do what the Court shall require of him.

Forfeiture and Discharge of the Recognizance.—The recognizance is forfeited, if the party make default in appearing at the sessions; in which case his default will be recorded, unless he has a reasonable excuse for his default, as in the case of sickness; when, it would seem, that the sessions might forbear to record the forfeiture of the recognizance, and take sureties from some friends of the party for his appearance at the following sessions (*u*). The recognizance is also forfeited by any actual violence to the person of another, whether done by the party himself, or by others through his procurement; by attending any unlawful assembly *in terrorem populi*; and even by words tending to a breach of the peace, as by challenging another to fight, or in his presence threatening to beat him, or by lying in wait for that purpose. And whenever the recognizance is thus forfeited before the time for the party's appearance at

(*r*) 4 Bl. Com. 253.

(*s*) See *ante*, p. 38.

(*t*) 1 Hawk. c. 60, s. 15; *Willes v. Bridger*, 2 B. & Ald. 278.

(*u*) Dalt. c. 120.

the sessions, the justice before whom it is taken should, under the provisions of the 3 Geo. 4, c. 46, s. 2, certify the recognizance, with the cause of the forfeiture, to the clerk of the peace (*x*). The recognizance is discharged by the demise of the crown, or the death of the principal party who is bound by it, if it was not forfeited before; but the sureties are not discharged by their death, their executors continuing to be bound, as their testators were (*y*).

Surety for the Good Behaviour.

THIS is of near affinity to surety for the peace, but it includes also something more; for he that is bound to the good behaviour is also necessarily bound to the peace, and a man may forfeit his recognizance for good behaviour, although he commits no actual breach of the peace (*z*). It is by many statutes declared to be part of the judgment on an offender, both on a proceeding by indictment, and on a summary conviction before a justice. But the statute, on which is founded the general authority of magistrates to require surety from a man for his good behaviour, is the 34 Edw. 3, c. 1, which directs that in every county shall be assigned for the keeping of the peace one lord, and with him three or four of the most wealthy in the county, with some learned in the law, and after giving them power to restrain and punish certain offenders, it declares that they shall also have power "to take of all them that be *not of good fame*, where they shall be found, sufficient surety and mainprize of their good behaviour towards the King and his people." This statute has been certainly carried further by construction, in favour of the jurisdiction of a single magistrate, than what could reasonably be inferred from its language; and, according to the opinion of Dr. Burn, there is scarcely any statute which has received such a largeness of interpretation. He says, that it was for a long time doubted whether one justice alone could require sureties for the good behaviour, and that the universal practice of one justice doing so is but of modern date. And there is certainly good reason for the doubt so long entertained; for the words of the statute are entirely in the plural, directing that "*they* shall have power to restrain offenders, &c.;" and where no power is expressly given by any statute to one justice alone to act, it is laid down by *Lambard*, that he cannot otherwise compel the

(*x*) See *ante*, *Finnes*, 279.

(*y*) 1 Hawk. c. 60, s. 17.

(*z*) 1 Hawk. c. 61, s. 5.

observation of it, than by the help of his fellow-justices. It was however, so long ago as the reign of Henry the Eighth, observed by Sir Anthony Fitzherbert, "that it seemeth that *one* justice may, by the commission, issue a warrant against a person to find surety of the good behaviour, by his discretion, as well as two justices may;" and he says that "the words of the stat. of 34 Edw. 3, are to the same effect." In this last assertion, however, he is decidedly wrong; for there is nothing in the words of the statute, from which it can possibly be inferred that *one* justice has power given him to act alone. And he seems, indeed, to doubt somewhat the correctness of his own opinion; for he adds, "the common usage is, to make such precept of the good behaviour in the name of *two* justices, and it is good to observe this direction" (a).

The practice, however, is acknowledged by Dr. Burn to be *universal* for one justice to take this species of security, notwithstanding it may be but of modern date; and therefore it seems too late now to dispute its propriety or legality. The causes for which the security may be required appear to be somewhat more questionable. The expression "not of good fame" in the statute, is of such comprehensive and uncertain signification, that some writers have included within its meaning, "persons suspected to be quarrelsome," "those who sleep in the day and go abroad in the night," "suspected persons, who live idly, and yet fare well, or are well apparelled, having nothing whereon to live" (b); a definition of so sweeping a character, that in these days a magistrate would have enough to do—at least in the district of the metropolis—if he was obliged to require all these persons to be bound to their good behaviour. It justifies, however, the remark of Dr. Burn, that the statute hath been so much extended, that it has become difficult to define how far it shall go, and where it shall stop. To bind a man to his good behaviour for *evil fame* in general, he rightly observes, may not always be done with safety, because the veracity of fame is proverbially not the most to be relied on, and many a good man is oftentimes evil spoken of. It is admitted, however, by all the writers on this subject, that, under the general words of the statute, a man may be bound to his good behaviour for causes of scandal, *contra bonos mores*, as well as *contra pacem*; and that it rests with the discretion (c) of the magistrate from what persons to

(a) Fitz. 7; Chit. Burn, 5 vol. 908.

(b) Dalt. c. 124; 1 Hawk. c. 61, s. 4.

(c) "Discretion," according to the admirable definition of Lord Coke, "is a

knowledge or understanding to discern between truth and falsehood, between right and wrong, between shadows and substance, between equity and colourable

require this security (*d*). Most of the persons enumerated by Dalton and Hawkins may now be punished under the Vagrant Act (*e*). Before a magistrate, therefore, requires a party to find sureties for his good behaviour, where no actual breach of the peace has been either committed or is apprehended, it will be prudent that he should be satisfied by evidence on oath, not only that the individual is "not of good fame" in reputation, but that his *conduct and actions* have been so scandalous, as to justify the interference of the magistrate. And if the party is committed for want of sureties, the magistrate should take care to show the cause with sufficient certainty. Therefore, where the cause for requiring surety from a man is certain expressions contained in a letter, it is not sufficient merely to state the objectionable passage, but the whole letter ought to be set forth (*f*).

A recognizance for the good behaviour may be forfeited, not only for an actual breach of the peace, but also for conduct which leads to a breach of the peace,—such as going armed with great numbers to the terror of the people, speaking words tending to sedition, and also for such actual misbehaviour as was intended to be prevented by the recognizance; but not for barely giving cause of suspicion of what perhaps may never happen (*g*).

1. *Information before a Justice, to require surety of the peace, or good behaviour.*

—, } Be it remembered, that on, &c., A. B. of —, in the said county of
to wit. } —, esquire, came personally before me, J. P., esquire, one of her
Majesty's justices of the peace in and for the said county, at, &c., and on his oath in-
formeth me, that C. D. of, &c., did on, &c., at, &c., most violently and maliciously
declare and threaten, &c., and did also on, &c. [*here state the defendant's threats and
acts*]; by reason of which said threats and conduct of the said C. D., he, this com-
plainant, is afraid that the said C. D. will do him some grievous bodily injury,* and
he therefore prays that the said C. D. may be required to find sufficient sureties to keep
the peace [*or "to be of good behaviour," as may be required*] towards him this com-
plainant: And this complainant also says, that he does not make this complaint against
the said C. D., nor require such sureties, from any hatred, malice, or ill will, but
merely for the preservation of his life and person from injury.

Sworn before me,

J. P.

A. B.

glosses and pretences, and not to do ac-
cording to our wills and private affec-
tions; and such discretion ought to be
limited and bounded with the rules of
reason, law, and justice. 5 Rep. 100;
Keighley's case, 10 Rep. 140.

(*d*) 1 Hawk. c. 61, s. 4; 4 Bl. Com.
256.

(*e*) See *post*.

(*f*) *Reg. v. Dunn*, 12 Ad. & E. 599.

(*g*) 1 Hawk. c. 61, s. 6.

2. *Warrant thereon, to bring the party before the Justice.*

County of } To E. F., constable of — in the said county, and all others whom
 —. } this may concern.

Whereas A. B. of — in the said county, esquire, hath this day made information on oath before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, at, &c., that C. D. of, &c., did on, &c., at, &c. [*here set forth the complaint as in the above form to the **], and therefore the said A. B. hath prayed that the said C. D. may be required to find sufficient sureties to keep the peace [*or "be of good behaviour," as the case may be*] towards him, the said A. B.: I do therefore hereby require and command you to apprehend and bring the said C. D. before me, on, &c., at, &c., to answer the said complaint, and to find sufficient sureties to keep the peace [*or "be of good behaviour"*] towards her Majesty and all her liege people, and especially towards the said A. B., for such term as shall be then enjoined him, and to be further dealt with according to law. Given under my hand and seal, the — day of —, &c.

J. P. (L.S.)

3. *Warrant for the good behaviour, on the 34 Edw. 3, c. 1.*

County of } To E. F., constable of — in the said county, and to all other consta-
 —. } bles and officers of the peace within the said county.

Forasmuch as wey the undersigned justices of the peace in and for the said county, are given to understand, by the information, testimony, and complaint of many credible persons, that A. B., of — in the county aforesaid, is a person not of good fame, nor of honest conversation, but an evil doer, rioter, and disturber of the public peace, so that murder, homicide, stripes, discords, and other grievances and damages amongst the liege subjects of our lady the Queen are likely to arise thereby: These are therefore, on the behalf of our said lady the Queen, to command you, and every of you, that you omit not by reason of any liberty within the county aforesaid, but that you attach, or one of you do attach, the aforesaid A. B., so that you have him before us on the — day of — instant, at — in the said county, to find then, before us, sufficient surety and mainprize for his good behaviour towards our said lady the Queen and all her people, according to the form of the statute in such case made and provided; and this you shall in nowise omit, on the peril that shall ensue thereon. And have you also then before us this precept. Given under our hands and seals, at, &c., this — day of —, &c.

4. *Commitment for want of sureties to keep the peace for a certain term.*

County of } To E. F., the constable of — in the said county, and also to the keeper
 —. } of her Majesty's gaol at — in the said county.

Whereas A. B., of, &c. [*here recite the complaint as in form No. 1*]; and whereas the said C. D. was this day brought and appeared before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, at, &c., to answer the said complaint; and I, the said justice, have ordered and adjudged, and do hereby order and adjudge, that the said C. D. shall enter into his own recognizance in the sum of 100*l.*, with two sufficient sureties in the sum of 50*l.* each, to keep the peace [*or "be of good behaviour," as the case may be*] towards her Majesty and all her liege people, and particularly towards the said A. B., for the term of twelve calendar months now

next ensuing: And insomuch as the said C. D. hath refused, and still refuses, to enter into such recognizance, and to find such sureties as aforesaid, I do hereby require and command you, the said constable, forthwith to convey the said C. D. to the common gaol at — in the said county, and to deliver him to the keeper thereof, together with this warrant; and I do also require and command you, the said keeper, to receive the said C. D. into your custody in the said gaol, and him there safely to keep for the space of twelve calendar months, unless he in the meantime enter into such recognizance, with such sureties as aforesaid, to keep the peace in the manner and for the term above-mentioned. Herein fail not. Given under my hand and seal, the — day of —, &c.

J. P. (L.S.)

5. Commitment for want of sureties to appear at the Quarter Sessions.

County of } To E. F., the constable of — in the said county, and also to the keeper
— of her Majesty's gaol at — in the said county.

Whereas [here recite the complaint as in the form No. 1]; and whereas the said C. D. hath been this day brought and appeared before me, the said justice, to answer the said complaint, and hath been required by me to find sufficient surties, as well for his appearance at the next general quarter sessions of the peace to be held for the said county, to do what shall be then and there enjoined him by the Court, as also in the meantime to keep the peace [or "be of good behaviour," as the case may be] towards her Majesty and all her liege people, and especially towards the said A. B.; but the said C. D. hath refused and neglected, and still refuses and neglects, to find such sureties: I do therefore hereby require and command you, the said constable, forthwith to convey the said C. D. to the common gaol at — in the said county, and to deliver him to the keeper thereof, together with this warrant; and I do also require and command you, the said keeper, to receive the said C. D. into your custody, and him there safely to keep until the next general quarter sessions of the peace to be held for the said county, unless he in the meantime find sufficient securities, as well for his appearance at the said sessions, as in the meantime to keep the peace as aforesaid. Given under my hand and seal, the — day of —, &c.

J. P. (L.S.)

6. Recognizance of the peace or good behaviour.

County of } Be it remembered, that on, &c. A. B., of —, in the county afore-
— said, —, C. D., of the same place, —, and E. F., of the same place, —, came before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, and acknowledged themselves to owe to our said lady the Queen, to wit, the said A. B. the sum of £—, and the said C. D. the sum of £—, and the said E. F. the sum of £—, of good and lawful money of Great Britain, to be respectively made and levied of their several goods and chattels, lands and tenements, to the use of our said lady the Queen, her heirs, and successors, if he, the said A. B., shall fail in performing the condition under written.

[If the party be bound merely to keep the peace, or be of good behaviour, for a specified time, the condition will be thus:] The condition of this recognizance is such, that if the above bounden A. B. shall keep the peace [or "be of good behaviour," as the case may be] towards our sovereign lady the Queen and all her liege people, and especially towards G. H., of —, in the said county, esquire, for the term of twelve

calendar months now next ensuing, then the said recognizance shall be void, but otherwise to remain in full force and virtue.

[*If the party be bound to appear at the sessions, the condition of the recognizance will then be as follows :*] The condition of this recognizance is such, that if the said A. B. shall personally appear at the next general quarter sessions of the peace to be holden for the said county, to do and receive what shall be then and there enjoined him by the Court, and in the meantime shall keep the peace [*or "be of good behaviour"*] towards her Majesty and all her liege people, and especially towards the said A. B. then, &c. [*as above*].

7. *Liberate, to discharge one committed for want of Sureties to keep the Peace.*

County of } To E. F., the keeper of her Majesty's gaol at —, in and for the said
—, } county.

You are hereby commanded to discharge out of your custody the body of A. B., of —, in the said county, —, he having this day entered into a recognizance before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, in the sum of £—, with two sureties in £— each, to keep the peace [*or "be of good behaviour," as the case may be*] towards her Majesty and all her liege people, and especially towards G. H., of, &c. for the space of twelve calendar months now next ensuing. Given under my hand and seal, the — day of —, &c.

Surgeons—See Apothecaries.

Swans.

IF swans are marked or pinioned, or if they are unmarked and kept in a pond or private river, it is felony to steal them (*h*). And by 1 & 2 Will. 4, c. 32, s. 24, if any person, not having the right of killing the game upon any land, nor having permission from the person having such right, shall wilfully take out of the nest, or destroy in the nest, upon such land, the eggs of any *swan*, wild duck, teal, or widgeon, or shall knowingly have in his house, shop, possession, or control, any such eggs so taken; he is liable to a penalty of 5s. for every egg, on conviction before two justices. For the recovery of the penalty, and the forms of proceedings, see *ante*, Gamt, pp. 358, 361.

Swearing.

PENALTIES.]—By 19 Geo. 2, c. 21, s. 1, if any person shall profanely curse or swear, and be thereof convicted on the oath of one

(*h*) 1 Hawk. c. 33, s. 27.

witness before one justice, he incurs the following penalties: every day labourer, common soldier, common sailor, and common seaman, 1s.; and every other person under the degree of a gentleman, 2s.; and every person of or above the degree of a gentleman, 5s.; and in case any such person shall, after conviction, offend a second time, he forfeits double, and for every other offence after a second conviction, treble the sum first forfeited.

In the hearing of a Justice.—By sect. 2, if any person shall profanely swear or curse in the presence and hearing of any justice, he may be convicted, without any other proof whatever.

Power of Constables.—By sect. 3, if any person shall profanely swear or curse in the presence and hearing of any constable, and such person be unknown to him, he may seize, secure, and detain the offender, and carry him before the next justice for the county or place wherein such offence was committed, who is required on the oath of such constable to convict the offender; but if the party be known to the constable, he is then speedily to make information before the justice, who, by sect. 4, shall immediately, either upon the information or oath of the constable, or of any other person, cause the offender to appear before him, and upon such information proved as aforesaid convict such offender. And in case he shall not immediately pay down the penalty, or give security to the satisfaction of the justice, he may be committed to the house of correction to hard labour for the space of ten days.

Soldiers not paying Penalty.—By sect. 5, in case any common soldier, or any common sailor, or common seaman belonging to any ship or vessel, shall be convicted, and shall not immediately pay down the penalty, or give security for the same, and also the cost of the information, summons and conviction, then, instead of being committed to the house of correction, he is to be ordered to be set publicly in the stocks for the space of one hour for every single offence; and, for any number of offences whereof he shall be convicted at one and the same time, two hours.

Penalty on Justices.—By sect. 6, if any justice shall wilfully and wittingly omit the performance of his duty in the execution of the act, he is liable to a penalty of 5*l.*, one moiety thereof to the use of the informer, and the other to the use of the poor of the parish wherein such justice shall reside, to be recovered by action in any of the Courts at Westminster.

Constables not doing their Duty.—By *sect. 7*, if any constable or other peace officer shall wilfully or wittingly omit the performance of his duty in the execution of the act, and be thereof convicted by the oath of one witness before any justice, he is liable to a penalty of 40s., to be levied and recovered by distress and sale, by virtue of a warrant under the hand and seal of such justice, one moiety thereof to go to the use of the informer, and the other to the use of the poor of the parish where the offence shall be committed; and in default of distress, the offender is to be committed to the house of correction to hard labour for one month.

By *sect. 8*, the conviction is required to be in the form there given, which is not to be removed by *certiorari*, and is to be returned to the sessions. It is too imperfect, however, to be relied on.

Application of Penalties, &c.—By *sect. 9*, any justice may act, although rated to the relief of the poor of the parish where the offence is committed; and, by *sect. 10*, all penalties for profane swearing shall be disposed of for the benefit of the poor of the parish wherein such offence was committed; and all charges of the information and conviction shall be borne by the party offending, if able, over and above the penalties inflicted by the act, which charges shall be ascertained by the justice before whom such conviction shall be made. And in case such party shall not be able, or shall not immediately pay the said charges, or give security for the same to the satisfaction of the justice, he is to be committed to the house of correction to hard labour for six days, over and above such time for which he may be committed in default of payment of the penalty; and in such case no charges of information and conviction shall be paid by any person whatsoever.

Limitation for Prosecution, &c.—By *sect. 12*, no person can be prosecuted for any offence against the act, unless within eight days after the offence committed.

By *sect. 14*, the justice's clerk can only take for the information, summons, and conviction, a fee of 1s.

In proceeding for a penalty under this statute, it is necessary that the conviction should describe the *quality* of the offender, although that is not required by the general form of conviction given by the 8th section; for, as the amount of the penalty depends upon the station in life of the offender, *that* ought to appear in the conviction to justify the penalty inflicted by the magistrate. And before the statute, it was not only necessary to state the quality of the de-

fendant, but to set forth also the particular oaths and curses which he had uttered (i).

1. Information for Swearing.

County of } The information of A. B., of —, in the county aforesaid, —, —, made on oath on, &c., at, &c., before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county; who saith, that on, &c. now last past, at, &c. he heard C. D., of —, in the said county, —, swear one profane oath [or "curse one profane curse"], in these words, to wit, &c.

2. Summons thereon.

County of } To E. F., the constable of —, and all others whom this may concern. } cern.

Whereas information hath this day been made before me, J. P., esquire, one of his Majesty's justices of the peace in and for the said county, upon the oath of A. B. of —, that on the — day of this present month of —, he heard C. D., of —, in the said county, gentleman, in the parish of —, in the said county, swear one profane oath [or "curse one profane curse"]; These are therefore to command you to cause the said C. D. forthwith to appear before me, to answer the premises, and to be further dealt with according to law. Given under my hand and seal, at —, in the said county, the — day of —, in the year of our Lord 1843.

3. Form of Conviction.

Middlesex, } Be it remembered, that on the — day of —, in the — year of to wit. } her Majesty's reign, C. D., of, &c. gentleman, was convicted before me, one of her Majesty's justices of the peace in and for the county aforesaid, [or "before me, —, mayor," "justice," "bailiff," or "chief magistrate," "of the city or town of —, within the county of —" as the case may be], of swearing one profane oath: Whereupon I, the said justice, do adjudge that the said C. D. hath forfeited for his said offence the sum of 5s., and that he do forthwith pay the same, together with the further sum of 1s., which have been settled and ascertained by me for the charges of the information and conviction for the said offence; and that in default of immediate payment of the said two sums, the said C. D. be committed to the house of correction at —, in the said county, for the space of sixteen days (k). Given under my hand and seal, this — day of —, &c.

4. Commitment thereon.

County of } To E. F., the constable of —, in the said county, and to the keeper —, of the house of correction at —, in the said county.

Whereas C. D., of —, in the said county, gentleman, is and stands convicted this day before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, of swearing one profane oath, on the — day of —, at the parish of —, in the said county, whereby he hath forfeited the sum of 5s. to the poor of the said parish

(i) *R. v. Sparling*, 1 Str. 497.

(k) That is, ten days for non-payment

of the penalty by *sect. 4*, and six days for non-payment of the costs by *sect. 10*.

of — : And whereas the said C. D. hath refused and doth refuse to pay down the said sum of 5s. for the use of the poor aforesaid, and also hath refused and doth refuse to give satisfactory security to pay the same : And whereas the said C. D. hath likewise refused and doth refuse to pay the sum of 1s. for the charges of the information and conviction of the said C. D., which I have settled and ascertained, and hath refused and doth refuse to give security for the same, to the satisfaction of the said justice : These are therefore to require you, the said constable, to convey the said C. D. to the house of correction at — aforesaid, and deliver him to the keeper thereof, together with this warrant : And I do hereby command you, the said keeper, to receive him the said C. D., into your custody in the said house of correction, and there to detain and keep him to hard labour for the space of sixteen days (1) ; and for so doing this shall be your sufficient warrant. Given under my hand and seal, at —, in the said county, the — day of —, in the year of our Lord 1843.

—◆—
Swindling—See False Pretences.

—◆—
Tailors.

BY 7 Geo. 1, c. 13, various provisions were made for regulating the conduct of *journeymen tailors*, within the weekly bills of mortality ; all of which are repealed by the 6 Geo. 4, c. 129, s. 2, except those which relate to the recovery of wages, or to journeymen departing from their service, or refusing to work. By *sect. 6*, (one of those remaining unrepealed,) if any journeyman or servant, actually retained or employed, shall depart from his service before the end of his term, or before his work for which he was hired be finished, or, not being retained or employed, shall refuse to enter into work, after request for that purpose by any master tailor for the wages and hours limited by that act, unless for cause to be allowed by two justices, he is liable, on conviction (by *sect. 1*) by two justices, on the oath of one witness within three months after the offence committed, to be sent to the house of correction to hard labour not exceeding two months. But it would seem, that journeymen tailors come within the general provisions of the 20 Geo. 2, c. 19, which are applicable to all *artificers, handicraftsmen, and other labourers* in any trade or business (m).

—◆—
Tenants—See Landlord and Tenant.

(1) That is, ten days for non-payment of the penalty by *sect. 4*, and six days for non-payment of the costs by *sect. 10*.

(m) *Lowther v. Earl of Radnor*, 8 East, 113 ; and see *ante*, p. 1079.

Thames.

FOR the offence of stealing from vessels on the Thames, see *Ships*.

For the prevention and punishment of certain other offences committed on the river, see *Metropolitan Police*, *ante*, p. 567; and for the settlement of wages of bargemen, sailors, &c., *ante*, p. 595.

For regulations as to the shipping, &c., see *Rivers and Navigation*.

For regulations as to gunpowder on board vessels, see *Gunpowder*, *ante*, p. 395, and *Metropolitan Police*, p. 564.

For regulations as to pilotage, see *Pilots*.

For regulations as to *fishing* in the river, see *Fish and Fisheries*, *ante*, p. 288.

By 7 & 8 Geo. 4, c. lxxv., for the better regulation of the *watermen* and *lightermen* on the river Thames, between *Yantlet Creek* and *Windsor*, it is enacted by *sect. 3*, that the provisions of the act are to extend to all parts of the river Thames, from and opposite to and including the town of *New Windsor* in the county of *Berks*, to and opposite to and including *Yantlet Creek* in the county of *Kent*, and to all docks, canals, creeks, and harbours of or out of the said river, so far as the tide flows therein.

Penalty on Clerk of Watermen's Company.—By *sect. 24*, if the clerk of the watermen's company shall refuse or neglect to register the name and place of abode or work of any freeman, or widow of a freeman, or the number of any wherry, boat, or other vessel, or the name and place of abode of any person who may keep any lighter, barge, or other boat or craft, and the name and number thereof, or other name or thing which is required by the act to be registered by him, on being applied to and required so to do; he is liable to a penalty not exceeding 5*l*.

Number of Apprentices.—By *sect. 29*, no freeman of the company, or the widow of any freeman, shall at the same time have more than two apprentices, or take a second apprentice until the first shall have served four years at least of his apprenticeship, unless such freeman or widow shall be the owner of twelve barges, lighters, or flat bottomed craft, who may have three apprentices at one time, and being the owner of twenty barges, &c., may have four apprentices, and no more; and if any freeman or widow shall take or employ a greater number of apprentices than above mentioned, he or she shall, for every additional apprentice, forfeit not exceeding 10*l*. The court

for the binding of apprentices may require proof on oath, that the freeman or widow is *bonâ fide* the real owner of the number of craft, in respect of which any additional apprentice is proposed to be taken before the binding of such apprentice.

Age of Apprentices.—By sect. 30, no freeman can bind or take any person as an apprentice, who shall be under the age of fourteen years, or above eighteen; and no indenture of apprenticeship shall be executed, unless it appear, by certificate signed by the minister or churchwardens of the parish or place where the person to be bound was born or baptized, or by the oath of a credible witness, that such person is of the age of fourteen, and under eighteen.

Penalty for false Certificates of Baptism.—By sect. 31, if any person shall falsely forge or counterfeit, or knowingly or willingly produce any false or forged certificate, or make any false oath or affirmation, of or concerning the age of any person to be bound apprentice as aforesaid, he shall forfeit not exceeding 10*l.*; and the indentures of apprenticeship shall be null and void.

None but Registered Freemen to take Apprentices.—By sect. 32, no freeman shall bind or employ any apprentice, unless he be a house-keeper, or have some known place of abode or of work; and every freeman shall, on the 1st September in every year, or within ten days afterwards, give notice to the clerk of the watermen's company of his place of abode or work, in order that the same may be registered; and such freeman shall lodge such apprentice in the house in which he shall reside. Upon any application made to the clerk of the company to make such register, the same shall be registered in a book of the company, without fee or reward. If any such freeman, who shall bind or employ any apprentice, shall neglect or refuse to give such notice of his place of abode or work, or shall not lodge his apprentice in the same house, he shall forfeit not exceeding 10*l.*; and the apprentice may, upon application made to the court of assistants of the company, be by them turned over to any other master.

Entrusting Boats to Apprentices.—By sect. 36, no apprentice is to have or take the sole care of any boat, or other vessel, unless he shall have worked and rowed upon the river as an apprentice for the space of two years, at the least; and the master of every such apprentice, not having so rowed and worked, who shall have or take such care of any such boat or other vessel, shall forfeit not exceeding 5*l.*

Penalty for unqualified persons plying, &c.—By sect. 37, if any

person,—not being a freeman of the company, or an apprentice to a freeman or the widow of a freeman (except as thereafter mentioned), shall act as a waterman or lighterman, or ply, or work, or navigate, or cause to be worked or navigated, any wherry, lighter, or other craft upon the river within the limits of the act, for hire or gain; he is liable to a penalty not exceeding 10*l*.

Licence; and Penalty for taking more than the proper number of Passengers.—By sect. 38, the court of assistants of the watermen's company are to grant a licence to any freeman to use and work for hire any wherry, boat, or other vessel, for carrying persons or passengers on the river within the limits of the act, on a certificate being produced to them, verified by the oath of the builder or owner of such boat, of the burthen, size, and dimensions thereof, according to the bye-laws or regulations to be made from time to time for that purpose; in which licence shall be expressed the number of passengers such boat shall be permitted to carry, and for which 1*s*. and no more shall be paid; which licence shall contain a number for such boat, which shall be registered in a book to be kept for that purpose by the clerk of the company; and the owner of such boat shall cause such number, together with his own name, to be painted and kept legible on such boat, in such manner as in any bye-laws of the watermen's company, or of the said court of lord mayor and aldermen, shall from time to time be directed. No wherry, boat, or other vessel, belonging to any freeman, shall be allowed to ply for hire at any public stairs or plying places, for the carrying of passengers for hire within the limits of the act, without such licence as aforesaid; and if any boat shall be used or worked without such licence, or without such name and number painted or legible thereon, the owner shall forfeit not exceeding 20*s*.; and if a greater number of passengers than expressed in the licence shall be carried in any such boat, the occupier thereof shall forfeit for the first offence, for every passenger exceeding such number, not more than 40*s*.; and for a second offence he is liable to be disfranchised, and shall not be allowed to work, row, or navigate any boat or other vessel, or to enjoy any of the privileges of a freeman for the space of twelve calendar months. If any greater number of passengers shall be carried than are allowed to be carried as aforesaid, and any one of them shall by reason thereof be drowned, every person who shall work or navigate the boat shall be deemed guilty of *misdemeanor*, and be liable to such punishment as in cases of *misdemeanor*, and shall also be disfranchised, &c. as

above mentioned. No licence is to be granted to any freeman residing at *Gravesend*, or at *Milton* next *Gravesend*, to use and work for hire any boat for carrying more than ten passengers, unless he shall produce a licence from the mayor, jurats, and common council of *Gravesend*, together with a certificate of his being a fit and proper person for that purpose.

Boats for carrying Goods must be registered.—By sect. 39, the company, upon the request in writing addressed to their clerk of any person keeping any lighter, barge, or other boat or craft, used for the carrying of goods, without passengers, shall cause the name and place of abode of such person, and also the name by which any such lighter, barge, boat, or other craft shall be called, or designed to be called, to be also duly registered in a book to be kept for that purpose, for which a fee of 1s. shall be paid. A number for such lighter, or other craft, is to be forthwith delivered by the clerk to such owner, who shall cause the same, together with the name of the lighter or craft, to be painted white on a black ground, in capital letters and figures, the figures to be not less than six inches long and broad in proportion, and the letters not less than four inches long and broad in proportion, such figures and letters to be painted on the hudds boards of barges, and on the bows of lighters and other craft, and to be preserved and kept legible, so as to be plainly seen in the daytime by persons passing on the river. No person shall have two lighters or other craft of the same name. If any such lighter or other craft shall be worked or navigated without being registered, or without the number and names being painted and legible as aforesaid, the owner is liable to a penalty not exceeding 40s.

Owners living out of limits of the Act.—By sect. 40, every person not residing within the limits of the act, and keeping any lighter, barge, or other boat, craft, or vessel, used for the carrying of goods, which may be navigated on the river within the limits of the act, shall cause his name and place of abode, and also the name of the vessel, to be painted white on a black ground, in capital letters and figures of the same dimensions, &c. as in the last section. If any such lighter, or other craft, shall be worked or navigated, without the name and place of abode being painted and legible as aforesaid, the owner is liable to a penalty not exceeding 5l.

Boats let for Hire.—By sect. 41, any wherry or other boat let out for hire or gain is in like manner to be registered by the clerk of the company, upon a fee of 2s. 6d., and the number is to be in like

manner painted thereon, under a penalty not exceeding 40s. for any neglect.

Plying on Sunday, &c.—By *sect. 42*, the Court of Assistants may appoint any number of watermen in their discretion to ply and work on the river on every Sunday, at and between Chelsea and Bow Creek (but so as not to interfere with or prejudice any established private ferry), at such common stairs or places of plying on either side of the said river; and the fare to be taken shall be 2*d.* for each person carried across the river. Every waterman appointed as aforesaid, shall, on the Monday morning, or such other day as the Court of Assistants shall appoint for that purpose, pay unto the clerk of the company, or such other person as the Court shall direct, all such sums of money as by them respectively shall be received for conveying passengers on Sunday as aforesaid; and the said Court shall pay to each waterman such a sum for his day's labour as they shall have agreed to pay for the same; and the surplus shall from time to time be applied to the use of the poor, aged, decayed and maimed watermen and lightermen of the said company and their widows, at the discretion of the Court of Assistants; and if any person, appointed to work as aforesaid, shall neglect so to pay over the full sum of money received by him on the Sunday, he is liable to a penalty not exceeding 40s.

By *sect. 43*, the company may let to farm to any freeman the said plying or working on Sundays, at any common stairs or places of plying for carrying or re-carrying of passengers across the river, provided they give fourteen days' previous notice thereof, by ordering a printed paper, expressing their intention to let the same, to be affixed in some conspicuous place, at or near such respective common stairs or places of plying, and let the same according to the highest bidder, who shall give security for payment of the rent. If any freeman, whom the company shall appoint to ply and work as aforesaid, or any person who shall take such plying or working to farm, or any person employed by him, shall demand or take from any person whom he shall ply to or carry across the river, any greater sum than 2*d.* for each person, he is liable to a penalty not exceeding 5*l.*

By *sect. 44*, if any person so appointed to ply, or taking such plying as aforesaid, shall employ, or wilfully permit or suffer any other person to be employed in plying or working as aforesaid, until such last-mentioned person and the boat to be used by him shall have

been approved of for that purpose by the watermen's company, he is liable to a penalty not exceeding 5*l*.

By *sect. 46*, no freeman, nor any apprentice, except such as shall be appointed as aforesaid, shall ply for, or take, or carry on a Sunday, at or from any common stairs or place of plying on either side of the river at and below London Bridge, at which the said Court shall appoint watermen to ply and work as aforesaid, any fare or passenger across the river, or to either of the two common stairs or places of plying on the opposite side of the river next above, or next below, the stairs or place at which such freeman or apprentice shall ply, nor to any place to which the fares and passengers taken at such common stairs and places of plying are usually conveyed by the watermen appointed by the said Court to ply and work at, nor to any ship, vessel, or craft lying or being on the river, within the distance of such two other stairs or places of plying; on pain of forfeiting not exceeding 40*s*.

By *sect. 47*, the justices at Gravesend may license freemen residing there to carry goods and passengers at and from Gravesend on Sundays. And by *sect. 48*, the fares to be taken are to be paid to the company, who, after paying the freeman for his day's labour, are to distribute the remainder twice a year for the benefit of the freemen residing at Gravesend.

By *sect. 49*, the justices at Gravesend may also grant permission to other watermen to work on Sundays for persons requesting such permission, in which case the waterman may retain the fares for his own benefit.

By *sect. 50*, if any freeman, or any apprentice (without having such licence or permission as aforesaid), shall ply or work at Gravesend on any Sunday, he is liable to a penalty not exceeding 5*l*.

Ringin' Tide Bell.—By *sect. 51*, the watermen's company are required to set up and maintain proper bells at Billingsgate, and Gravesend, to give notice of the tide, and to appoint officers to ring the same at Billingsgate at every time of high water at London Bridge, and the bell at Gravesend at every time of the first of flood there, under the penalty of 50*l*., recoverable in the Courts at Westminster.

By *sect. 52*, the officers so appointed shall give their constant attendance, as well by night as by day, at Billingsgate and Gravesend, at every time of high water at London Bridge, and at Gravesend at every time of the first of flood there; and shall at each of the said places ring the bell to be provided for that purpose, and continue

ringing the same for fifteen minutes, to give notice to the respective owners and masters of boats and wherries who design to pass between London and Gravesend by that tide; under a penalty of 40s. for any neglect.

Delaying departure.—By *sect. 53*, if, after the ringing of such bell, any boat designing to go by that tide from one to the other of those places shall not immediately depart and effectually proceed, without lying by in the river, or putting again on shore within two miles of Billingsgate or Gravesend, for taking in any goods or passengers, or if any such boat shall not be provided with two sufficient men, besides apprentices, during the whole of such voyage; the owner, master, or manager of such boat is liable to a penalty not exceeding 5*l*.

Losing the Tide.—By *sect. 54*, if any waterman navigating, working, or rowing any vessel or boat between London and Gravesend, shall wilfully or negligently lose the tide, by putting on shore for the taking in of any other passenger or goods, or by loitering on the voyage or by the way, or if any of the passengers shall be put out or landed short of the place to which such vessel or boat shall have been bound (sailing vessels detained for want of wind only excepted), such passengers are discharged from paying their fares, and the waterman is liable to a penalty not exceeding 40*s*., besides being liable to be sued at law.

Penalty for demanding more than Fare.—By *sect. 61*, the Court of Aldermen are to fix fares for watermen, subject to the approval of the Privy Council. And by *sect. 62*, whoever shall demand and take for his labour and fare more than the prices or sums so fixed and allowed, is liable to a penalty not exceeding 40*s*.

By *sect. 63*, lists of fares are to be advertized and made public by the Court of Lord Mayor and Aldermen.

List of Fares and half-mile Posts.—By *sect. 64*, a list of fares is required to be put up by the watermen's company at certain plying places between Chelsea Bridge and Greenwich, and also half-mile posts or piles westward of Chelsea Bridge and eastward of Greenwich, with letters and figures thereon denoting the distance from Chelsea Bridge or Greenwich Hospital, under a penalty on the company of 25*l*. for any neglect, payable to the informer, and recoverable by action at law. If any person shall wilfully break, cut down, pull up, or damage any such board, post, or pile, or obliterate,

deface, spoil, or destroy all or any or any part of the list, letters, figures, or marks which shall be painted or affixed thereon; he is guilty of a *misdemeanor*, and liable to such punishment as in cases of *misdemeanor*, and on the conviction of every such offender, the watermen's company are required to pay 20*l.*, as a reward to the person who shall inform of such offence, and also to pay all the costs of the prosecution.

Watermen to carry a List of Fares, &c.]—By *sect. 66*, the Court of Assistants of the Watermen's Company are to cause a list of the fares so fixed and allowed as aforesaid, together with such of the provisions of the act, and of the bye-laws made by that Court, and by the said Court of Lord Mayor and Aldermen, relating to the conduct of the watermen when plying for hire, as the said Court of Lord Mayor and Aldermen shall think proper, to be printed on a card or otherwise, as that Court shall direct; of which a copy is to be given gratis to every freeman of the company, upon payment of his quarterage, and copies also are to be furnished to every such freeman, upon payment at the rate of 1*s.* for a dozen copies. Every freeman or apprentice must have a copy in his boat; and if he shall not be able, or shall refuse, to produce the same to any person by whom a fare shall be payable, or shall produce a false copy, or shall not permit such person to examine the same, the passenger is discharged from paying his fare, and the freeman or apprentice is liable to a penalty not exceeding 5*l.*

Penalty for refusing to take a Fare, &c.]—By *sect. 67*, if any freeman or apprentice, who is at any stairs or plying place, shall wilfully avoid, or attempt to avoid any fare, or passenger, coming to or being at such stairs or plying place for the purpose of taking a boat, or shall omit or neglect to ply, or refuse or omit to take such fare or passenger inquiring for or desirous of taking such boat, or shall say or represent that he is hired or engaged, when he is not so hired or engaged, or shall not answer when called by the number of his boat; penalty not exceeding 5*l.*

Delaying Passengers.]—And by *sect. 68*, he incurs a like penalty, if he shall ply any passenger, and afterwards refuse to take him to such place as he shall direct, or shall unnecessarily delay any passenger, by not bringing up his boat for the passenger to get into it, or shall continue at the stairs or causeway after such passenger is in his boat, or shall not proceed with due diligence and exertion, and

without wilful let or hindrance, to such place as the passenger shall lawfully direct.

Penalty for abusive Language, &c.]—By *sect. 69*, he also incurs a like penalty, if he shall refuse to permit any person to read, or shall in anywise hinder him from reading, the name and number painted on any boat, or shall refuse to tell his christian or surname, or the number of his boat, to any person who shall demand the same, on being paid any fare or price, or shall, in answer to such demand, give a false name or number, or shall make use of any scurrilous or abusive language to any passenger or person.

Lord Mayor and Justices may summon and apprehend Watermen for misconduct.]—By *sect. 74*, in case any freeman, or apprentice, or other person, shall offend against this act, or any rules or bye-laws made by the Court of Lord Mayor and Aldermen, or by the Court of Assistants of the Watermen's Company, or by the master, wardens, and assistants of the Trinity House, which have been approved under the provisions of the act, the lord mayor, recorder, or any one alderman of London, or any justice of the peace for the respective counties and places next adjoining to the River Thames, at and between *Yantlet Creek* and *Windsor*, within his several jurisdiction, and any justice of the peace of Gravesend and Milton within his jurisdiction, (which includes any part of the river between *Broadness Point* in the *Northfleet Hope*, in the county of Kent, and *Yantlet Creek* aforesaid,) upon complaint made within thirty days after the commission of any such offence or misbehaviour committed within his respective jurisdiction, may cause the offender to be summoned personally, or by leaving such summons at his last or usual place of abode, to appear and answer the said complaint. If the party after being duly summoned shall refuse or neglect to appear and answer to the complaint, a warrant may then be issued for apprehending him, upon oath being made of the service of the summons, to bring the party before the lord mayor or justice, who is required to examine upon oath the complainant, or any witness, touching such offence or misbehaviour; and if the party accused shall be thereof convicted by the oath of the complainant, or of one credible witness, the lord mayor or justice may impose a fine upon the offender, not exceeding the penalty inflicted by the act, or such rules or bye-laws made and approved of as aforesaid; and if the person convicted shall not forthwith pay the penalty, the lord mayor or justice may, by warrant under his hand and seal, cause the same to be levied, together with the costs of the information, summons, warrant,

and conviction, by distress and sale of the goods of the offender, and may order the offender to be detained and kept in safe custody until return can conveniently be made to the warrant of distress, unless he shall give sufficient security for his appearance on such return, not being more than seven days from the time of taking such security. In default of distress, the offender may be committed to the common gaol or house of correction of the city, county, or place where the offender shall be or reside, not exceeding two calendar months, unless such penalty and costs, and all reasonable charges attending the same, shall be sooner paid.

Restriction as to apprehension.—By sect. 75, no constable, however, can by virtue of any such warrant apprehend or take any freeman, or apprentice, or mariner, out of any boat or craft which they respectively may happen to be on board of rowing or navigating, until such boat or craft shall be safely moored, unless there shall be sufficient hands on board to row, navigate, or take care thereof; and notice of this provision shall be inserted in every such warrant, for the information of the constable or other officer, who may have the execution thereof.

Persons refusing to pay their Fare.—By sect. 76, if any person shall refuse to pay any freeman, or apprentice, or any mariner licensed by the Trinity House, the money justly due to him for carrying any such person in his boat, according to the fares or prices allowed and published as aforesaid, the lord mayor, or justice within whose jurisdiction such refusal shall be made, may, upon complaint made of such refusal, summon such person to answer the complaint, by causing such summons to be served personally, or by leaving the same at his last or usual place of abode; and if he shall refuse or neglect to appear and answer to the complaint, a warrant may then be issued for apprehending him, upon oath being made of such refusal, and of the service of such summons; and upon the party being brought before the lord mayor or justice, and due proof made of such refusal of payment, upon oath or upon confession of the party, the lord mayor or justice may order payment of such sum as the waterman may appear to be entitled to, and also award a reasonable satisfaction to be made to him for his loss of time and costs; in default of payment of which, the party may be committed to prison, not exceeding one calendar month.

Persons refusing to give their Names, &c.—By sect. 77, if any person shall refuse to pay his fare, and shall also refuse to give to the waterman, upon demand, his name and place of abode, or shall

wilfully give any false name or place of abode, for the purpose of preventing him from being summoned, he is liable to a penalty not exceeding 5*l.*; and may thereupon be proceeded against, not only for the recovery of the money justly due to the waterman, and reasonable satisfaction for his loss of time and costs, but also for the penalty.

By *sect. 78*, a general form of conviction is given.

Jurisdiction of the Watermen's Company.—By *sect. 79*, upon complaint made by one waterman against another for any offence against the act, the master, wardens, and assistants of the watermen's company, or any two of them, as well as the lord mayor or any justice, may hear and determine the offence, upon complaint made within thirty days after its commission, and may proceed by summons, warrant, and commitment against the offender, in the same manner as a justice may under *sect. 76*, pursuing only the general form of conviction given by *sect. 79*, where the jurisdiction is thus exercised by the watermen's company. A penalty of 20*s.* is imposed upon persons summoned not appearing; and by *sect. 81*, jurisdiction of the company is not to extend to any but freemen.

Imprisonment of Apprentices.—By *sect. 82*, every apprentice who shall be imprisoned for any offence against the act, or any of the rules or bye-laws as aforesaid, shall serve as an apprentice to his then master, not only till the expiration of the term of his apprenticeship, but also for such further time as shall be equal to the time of his imprisonment; and he shall not be entitled to the privileges and benefits of serving an apprenticeship, until he shall actually have served such further time.

Competency of Witnesses, &c.—By *sect. 84*, any freeman of the said company, or the apprentice of any freeman, shall be competent to give evidence in any proceeding under the act. And by *sect. 85*, if any person, who shall be summoned as a witness to give evidence respecting any matter of fact relating to any information or complaint for any offence against the act, or any such rules or bye-laws as aforesaid, shall, after a reasonable sum for his costs shall have been paid or tendered to him, refuse or neglect to appear at the place and time by such summons appointed, without a reasonable excuse for such neglect or refusal, he is liable to a penalty not exceeding 40*s.*

Proceedings for the recovery of Penalties.—By *sect. 86*, where any penalty imposed by the act is made recoverable by information, the party may be summoned, and the magistrate may, on such sum-

mons, hear and determine the complaint, and convict the offender, without any information in writing. And by *sect. 87*, no distress shall be deemed unlawful for want of form.

Application of Penalties.—By *sect. 88*, all penalties shall be paid to the watermen's company within one week after the same shall be levied; one half of which shall be applied towards the fund, directed by the act to be provided to defray the expenses of erecting and maintaining boards, posts and piles, and the payment of rewards and costs as aforesaid; and the surplus (if any) of the said half, after deducting so much as shall be necessary for the purposes of the said fund, and the whole of the other half, shall be paid and distributed to the poor, aged, and decayed freemen of the company, and their widows. A power, however, is given to the convicting magistrate out of any penalty to reward the informer according to his discretion, so as such reward exceed not one half of the penalty.

Award for damage done to any Boat.—By *sect. 89*, if any person shall do or commit any damage, injury, or spoil, to or upon any lighter, barge, boat, wherry, or other vessel or craft within the limits of the act, and shall be thereof convicted within three months next after the commission of such injury, before the lord mayor, or any alderman or justice within whose jurisdiction such offence shall have been committed, by the oath of one credible witness, or of the party aggrieved, the offender shall pay to the person aggrieved such a sum of money as shall appear to the convicting justice to be a reasonable compensation for the damage, not exceeding in any case the sum of 5*l.* If, however, such conviction shall take place on the sole evidence of the party aggrieved, then such compensation shall be paid to the overseers of the poor of the parish or place where the offence was committed. In default of payment of such sum, together with all costs, charges, and expenses attending the conviction, the offender may be committed to the common gaol or house of correction to hard labour, not exceeding three calendar months, unless such penalty, costs and charges shall be sooner paid.

Appeal, &c.—By *sect. 90*, any person aggrieved may appeal to the next quarter sessions, or if holden within ten days after the conviction, he has then the option of appealing to the next following sessions, upon entering into a recognizance, with one surety, in 20*l.*, to prosecute the appeal.

By *sect. 91*, no proceedings shall be vacated or quashed for want

of form only, or be removed by *certiorari*, or any other writ or process whatsoever, into any of the Courts at Westminster.

Watermen of St. Margaret and St. John, Westminster.—By *sect. 97*, the act is not to extend to prevent the watermen of the parishes of St. Margaret and St. John, Westminster, from plying or working across the river from Westminster Bridge to Standgate, and from the Horse Ferry to Lambeth Bridge, on every Sunday, and taking the fare of 1*d.* for each passenger, in their several turns, as they have been accustomed. The money earned by them on that day is directed to be employed for the use of the poor, aged, decayed and maimed watermen and their widows, of St. Margaret's and St. John's; and any two justices of the peace of those parishes are authorized to call the watermen to account for the money so earned by them on the Sunday, and to cause the same to be so applied and disposed of.

Western Barges and Ferries above Kingston.—By *sect. 101*, the act also is not to extend (except the provision for compelling the name of the barge, and the name and place of abode of the owner, to be painted thereon) to any Western barges, which include all flat bottomed boats and barges navigating from Kingston, or any place beyond that town, and these may be navigated as far as London Bridge; nor to any ferry-boats worked or rowed at any ferry across the river between Kingston and New Windsor.

Private Lighters.—By *sect. 102*, the act is not to prevent persons from keeping, and using, and rowing by their servants, any lighter, or other large craft, for carrying their own goods, provided such servants be freemen, or apprentices to freemen or to widows of freemen, of the watermen's company. But by *sect. 103*, if any such person shall carry any passenger, or goods, for hire, or otherwise than their own as aforesaid, or shall permit any person to row in, navigate, or work any such vessel, who is not a freeman, or an apprentice to a freeman, or to a widow of a freeman of the company, he is liable to a penalty not exceeding 10*l.*

Lay Stalls, Market Gardeners, &c.—By *sect. 104*, the act also is not to prevent any owners, proprietors, or lessee of lay stalls, from carrying off the soil from them in such lighters or vessels, and by such persons as have hitherto been accustomed; or any owners or proprietors of chalk hoys from bringing chalk in such hoys or vessels, and by such persons as have hitherto been accustomed; or any gardeners from bringing to the markets of London and Westmin-

ster and the places adjacent, their own fruit, and other produce of their gardens, or soil and dung, in their boats and by their own servants, as they have formerly been accustomed; or any fisherman from using his own boat for the purpose of his business; nor any ballastman, from using any vessel for digging, getting, and carrying any ballast. But by *sect. 105*, if any such persons shall carry in any such lighters, vessels, or boats, any passenger, or any kind of goods, wares, or merchandize, for hire, or other than for and on their own account, they are liable to a penalty not exceeding 10*l*.

Selling Spirits on board Steam Boats, &c.—By 5 & 6 Vict. c. 44, s. 5, no wines, spirits, or other exciseable liquors, shall be sold by retail on board of any boat, steam boat, or other vessel, which shall be moored or lying at anchor within the metropolitan police district, during the hours and times on Sundays, Good Friday, and Christmas Day, on which licensed victuallers are by law obliged to keep their houses closed (*m*); and any master, steward, mistress, or stewardess, or any other person on board any such vessel, who shall, during those hours on Sunday, Good Friday, and Christmas Day, in which the houses of licensed victuallers shall be closed, sell any wines, spirits, or other exciseable liquors in and on board such vessel within the said district, shall be liable to a penalty not exceeding 5*l*., which may be recovered before any magistrate of the metropolitan police courts,—or, if the offence shall be committed beyond the limits of any metropolitan police court, before any two justices of the peace having jurisdiction therein,—or shall, in the discretion of the magistrate or justices, be imprisoned not longer than one calendar month in any gaol or house of correction within his jurisdiction; and, in every case of the adjudication of such pecuniary penalty, and nonpayment thereof, the magistrate or justices may commit the offender to such gaol or house of correction, not exceeding one calendar month; the imprisonment to cease on payment of the sum due. The penalty is to be paid to the receiver of the metropolitan police, and be applied by him towards the expenses of the police courts established within the said district.

Conviction under the 7 & 8 Geo. 4, c. lxxv, s. 37 (n), for working a Lighter on the Thames for hire, not being a Freeman of the Company, or an Apprentice to a Freeman.

London, } Be it remembered, that on the — day of —, in the year of our
to wit. } Lord 1843, at the Mansion House, in the city of London, A. B. is con-

(*m*) See *ante*, p. 21, 28.

(*n*) This form of conviction is given by *sect. 78*.

victed before me —, lord mayor of the city of London : For that he the said A. B. within thirty days (o) before the exhibiting of the information in this behalf, to wit, on Friday (p) the 21st day of April instant, at the parish of —, in the city of London, not being a freeman of the Company of Watermen and Lightermen of the River Thames, nor an apprentice to a freeman or to a widow of a freeman of the said company, and not being the owner of any ferry (q) over or across the said river, nor an officer of any company of proprietors of any canal (r) of or out of the said river, nor a person employed in navigating a western barge (s), nor an owner, proprietor, or lessee of any laystall (t), or a person employed by such owner, proprietor, or lessee ; nor an owner or proprietor of any chalk hoy (t), nor a person employed by such owner or proprietor ; nor a gardener (t), or a servant to a gardener ; nor a fisherman (t), or ballastman (t), or a person employed by a ballastman or lighterman for the purpose of his business ; did, for hire and gain (u), upon the river Thames between the town of New Windsor, in the county of Berks, and Yantlet Creek, in the county of Kent (v), act as a lighterman, and did then and there work and navigate, and cause to be worked and navigated, a certain lighter upon the said river, from and to a certain ship then lying at anchor in the said river, contrary to an act passed in the eighth year of the reign of King George the Fourth, intituled “ An Act for the better Regulation of the Watermen and Lightermen on the River Thames between Yantlet Creek and Windsor,” or some rule or bye-law made as therein mentioned. And I do adjudge the said A. B. to pay and forfeit for his said offence the sum of 10*l.*, being the penalty by him forfeited, and also the sum of 10*s.* for costs. Given under my hand and seal the day and year first above written (x).

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Theatres—See Players and Playhouses.

◆

Theft—See Larceny, Stealing.

(o) See *sect. 74, ante*, p. 1288.

(p) The day of the week is specified, to prevent the necessity of negating the fact of the defendant being one of the watermen of the parishes of St. Margaret and St. John, Westminster, who have certain privileges to work on a Sunday, independent of the watermen's company.

(q) By *sect. 99*, the act is not to extend to any existing ferry.

(r) By *sect. 100*, the act is not to extend to any dock company.

(s) See *sect. 101*, p. 1292.

(t) See *sect. 104, ante*, p. 1292.

(u) The servant of a mastmaker, rowing his master's skiff with some spars to put on board a ship, does not act as a lighter-

man for hire and gain, if he does not receive anything for his labour, in addition to his usual wages ; *R. v. Hobson*, 2 M. & S. 145 ; *R. v. Taylor*, *id.* 147, note (u).

(v) See *sect. 3, ante*, p. 1280.

(x) Notwithstanding the general form of conviction given by the 78th section of the act, it is necessary to negative the exemptions contained in the concluding sections, inasmuch as the enacting clause, the 37th section, containing the words “ except as hereinafter is mentioned,” thus incorporates with it, by reference, the subsequent provisions of the act in favour of persons exempted from the penalty ; *Steele v. Smith*, 1 B. & Ald. 99.

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Thrashing Machine—See Manufactures.

Threats and Threatening Letters.

And see Robbery.

SENDING a Letter threatening to murder or burn, &c.—By 4 Geo. 4, c. 54 (y), if any person shall knowingly and wilfully send or deliver any letter or writing, with or without any name or signature subscribed thereto, or with a fictitious name or signature, threatening to kill or murder any of her Majesty's subjects, or to burn or destroy his or their houses, outhouses, barns, stacks of corn or grain, hay or straw; or shall procure, counsel, aid, or abet the commission of the said offence; or shall forcibly rescue any person from being lawfully in custody for such offence; the offender is guilty of *felony*, punishable with *transportation for life, or not less than seven years; or with imprisonment, with or without hard labour, not exceeding seven years.*

Threats, with intent to extort Money.—By 7 & 8 Geo. 4, c. 29, s. 8, if any person shall knowingly send or deliver any letter or writing, demanding of any person with menaces, and without any reasonable or probable cause, any money, chattel, or valuable security; or if any person shall accuse, or threaten to accuse, or shall knowingly send or deliver any letter or writing, accusing, or threatening to accuse, any person of any crime punishable by law with death, transportation, or pillory, or of any assault with intent to commit a rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as thereafter defined, with a view or intent to extort or gain from such person any chattel, money, or valuable security; the offender is declared to be guilty of *felony*, punishable with *transportation for life, or not less than seven years; or with imprisonment not exceeding four years, with or without whipping, in addition to the imprisonment.*

1. Commitment, on 4 Geo. 4, c. 54, s. 3, for sending a Letter threatening to murder or burn, &c.

County of —, } To the constable of — in the said county, and to the keeper of
to wit. } the common gaol at —, in the said county.

Whereas A. B. hath been this day charged before me, J. P. esq., one of her Ma-

jesty's justices of the peace in and for the county aforesaid, on the oath of C. D. of —, and others, for that he the said A. B., on the — day of — last, at the parish of —, in the said county, knowingly, wilfully, and feloniously did send [or "deliver"] to the said C. D. a certain letter and writing thereby and therein threatening to kill and murder the said C. D. [or "to burn and destroy a certain house of the said C. D., according to the fact"], against the form of the statute in such case made and provided; These are therefore to command you, the said constable, forthwith to convey and deliver into the custody of the keeper of the said common gaol the body of the said A. B., together with this warrant. And you, the said keeper, are hereby required to receive the said A. B. into your custody in the said common gaol, and him there safely to keep, until he shall be thence discharged by due course of law. Herein fail you not. Given under my hand and seal at — in the said county, this — day of —, in the year of our Lord 1843.

2. Warrant to apprehend a party, on 7 & 8 Geo. 4, c. 29, s. 8, for sending a threatening Letter, with intent to extort Money.

County of } To E. F., the constable of —, and to all other peace officers in the
— } said county.

Forasmuch as A. B. of —, in the said county, esquire, hath this day made information and complaint upon oath before me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, that he did, on, &c. at, &c. receive a certain letter, directed to him, from some person unknown to him the said A. B., accusing and threatening to accuse the said A. B. of an attempt and endeavour to commit a rape upon the body of one S. Y., with intent to extort money from the said A. B., and that he the said A. B. hath just cause to suspect, and doth suspect, that the said letter was sent by one C. D. of, &c. These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace in and for the said county, the body of the said C. D., to answer unto the said complaint, and to be further dealt withal according to law. Herein fail you not. Given under my hand and seal, the — day of, &c.

J. P. (L. s.)

3. Commitment for a like offence.

Commencement as in form No. 1.] on the — day of — last, at the parish of —, in the said county, knowingly and feloniously did send to C. D., of, &c. a certain letter, directed to him the said C. D., accusing and threatening to accuse the said C. D. of an attempt and endeavour to commit a rape upon the body of one S. Y., with intent to extort money from the said C. D., which said letter was and is as follows [here set it forth verbatim]; against the form of the statute in that case made and provided. These are therefore to command you, &c. [as in the form No. 1].

Tippling—See Drunkenness.

Tithes.

THE jurisdiction of magistrates to make orders on complaints for nonpayment of tithes took its origin from two statutes passed in the 7th and 8th years of the reign of Will. 3,—one relating to small tithes, only, not exceeding 40s. in amount,—the other relating to tithes generally, whether great or small, not exceeding 10l. in amount, due from Quakers. This jurisdiction has been in both cases extended by subsequent statutes. But, as the original acts are perfectly distinct in themselves, and the method of proceeding is different in each instance, it will be better to consider the statutes separately, as well as the subsequent enactments relating, as they may, either to the community in general, or to Quakers in particular.

1. *Remedy for Tithes against Persons in general.*
2. *Remedy against Quakers.*
3. *Jurisdiction of Justices under the Acts for the Commutation of Tithes.*

1. *Remedy for Tithes against Persons in general.*

Complaint to two Justices.—By 7 & 8 Will. 3, c. 6, s. 1, if any person shall subtract or withdraw, or in any way fail in the true payment of any *small tithes* (a), offerings, oblations, obventions, or compositions for the same, where the same do not amount to above the yearly value of 40s. (a), by the space of twenty days, at most, after demand thereof, the person to whom the same shall be due may make his complaint in writing unto two justices of the peace, within that county, city, town, or place where the same shall grow due; neither of which justices is to be the patron (b) of the church or chapel whence the said tithes do or shall arise, nor in any way interested in the same.

Power of Adjudication thereon.—By sect. 2, the justices are authorized and required to summon, in writing under their hands and seals, by reasonable warning, every such person against whom any complaint shall be made; and after his appearance, or upon default of appearance, the summons being proved before them upon oath, the justices shall proceed to hear and determine the complaint, and, upon the proofs, evidences and testimonies produced before them, shall in writing under their hands and seals adjudge the case, and

(a) But see 53 Geo. 3, c. 127, s. 4, *post*, p. 1300.

(b) See 7 Geo. 4, c. 15, *post*, p. 1300.

give such reasonable allowance and compensation for such tithes, oblations and compositions so subtracted or withheld, as they shall judge to be just and reasonable, and also such costs and charges, not exceeding 10s., as upon the merits of the case shall appear just.

Power of Distress.—By *sect. 3*, if any person shall refuse or neglect, by the space of ten days after notice given, to pay or satisfy any such sum of money, as upon such complaint and proceeding shall by two justices be adjudged as aforesaid, the constables and churchwardens of the parish, or one of them, shall, by warrant under the hands and seals of the justices to them directed, distrain the goods and chattels of the party so refusing or neglecting as aforesaid; and, after detaining them by the space of three days, in case the sum so adjudged to be paid, together with reasonable charges for making and detaining the said distress, be not tendered or paid by the party in the mean time, shall and may make public sale of the same, and pay to the party complaining so much of the money arising by such sale as may satisfy the sum so adjudged, retaining to themselves such reasonable charges for making and keeping the distress as the justices shall think fit, and shall render the overplus to the owner.

Exceptions from Act.—By *sect. 5*, the act is not to extend to any tithes, &c. within the city of London or the liberties thereof, nor to any other city or town corporate where the same are settled by any act of parliament.

Limitation of Proceedings.—By *sect. 6*, no complaint shall be heard and determined by any justices, unless it shall be made within two years next after the times that the tithes, &c. became due or payable.

Appeal, &c.—By *sect. 7*, persons aggrieved may appeal to the next quarter sessions; and no proceedings can be removed by *certiorari* or other writ out of the Courts at Westminster.

Where persons insist on any Composition or Modus.—By *sect. 8*, where any person complained of shall before the justices insist upon any prescription, composition, or *modus decimandi*, agreement, or title, whereby he is or ought to be freed from payment of the tithes or other dues in question, and deliver the same in writing to the justices, subscribed by him, and shall then give to the party complaining reasonable and sufficient security, to the satisfaction of the justices, to pay all such costs and damages, as upon a trial at law in any court having cognizance of that matter shall be given against

him; in that case the justices shall forbear to give any judgment in the matter.

Judgment of Justices to be enrolled.—By *sect. 9*, every person who shall obtain any judgment, or against whom any judgment shall be obtained, shall cause the judgment to be enrolled at the next general quarter sessions; and the clerk of the peace is required, upon tender thereof, to enrol the same, for which he is not to receive any fee or reward exceeding 1s.

Distress on persons removing from the County.—By *sect. 10*, if any person, against whom any such judgment shall be had, shall remove out of the county before the levying of the sum thereby adjudged, the justices who made the judgment, or one of them, shall certify the same, under his or their hands and seals, to any justice of such other county wherein the said person shall be an inhabitant; which said justice is required, by warrant under his hand and seal to be directed to the constables or churchwardens of the place, or one of them, to levy the sum so adjudged upon the goods and chattels of such person, as fully as the other justices might have done if he had not removed.

Costs.—By *sect. 12*, the justices who shall hear and determine any of the matters aforesaid, shall have power to give costs, not exceeding 10s., to the party prosecuted, if they shall find the complaint to be false and vexatious; which costs shall be levied in manner and form aforesaid.

By *sect. 14*, any person who shall begin any suit for the recovery of small tithes, oblations or obventions, not exceeding the value of 40s., in the Court of Exchequer, or in any of the Ecclesiastical Courts, shall have no benefit by the act for the same matter for which he may have so sued.

Under this statute it has been determined, that if the defendant insists upon a *modus*, the justices have no jurisdiction; but he cannot set it up on the trial of an appeal to the sessions, if he has omitted to insist upon it before the justices (*c*). And a mere bare assertion by the defendant of the existence of a *modus*, or composition, will not suffice to prevent the justices from hearing the case, unless he complies with the requisitions of the 8th section (*d*).

(c) *R. v. Jeffreys*, 1 B. & C. 604.

(d) See *R. v. Wrottesley*, 1 B. & Adol. 648.

All Tithes not exceeding 10l.—By 53 Geo. 3, c. 127, s. 4, the above provisions of the 7 & 8 Will. 3, c. 6, are extended to all tithes whatsoever, where the same shall not exceed 10l. in amount from any one person; and one justice may receive the original complaint, and summon the parties to appear before two justices.

Where Justices are Patrons of the Church.—By 7 Geo. 4, c. 15, it is provided that in all cities, towns corporate, or other towns or places, where the justices of the peace are patrons of the church or chapel whence any tithes or offerings arise, two justices for any adjoining county may in that case hear and determine all complaints for withholding tithes and offerings not exceeding the amount of 10l.; such complaint to be made in writing by the rector or vicar, or other person, his attorney or agent.

Extortion in Distraining.—By 7 & 8 Geo. 4, c. 17, the provisions of the 57 Geo. 3, c. 93, (for punishing persons for extortion in distraining for small rents,) are extended to distresses for tithes; for which see *Landlord and Tenant*, ante, p. 514.

Prohibition of other Proceedings.—The 5 & 6 Will. 4, c. 74, s. 1, prohibits any suit or other proceeding in any court to recover tithes under the yearly value of 10l., except in the cases provided for by the 7 & 8 Will. 3, c. 6, and 53 Geo. 3, c. 127. But this prohibition is not to extend to any case in which the actual title to any tithe, oblation, composition, *modus*, due, or demand, or the rate of such composition or *modus*, or the actual liability or exemption of the property to or from any such tithe, &c., shall be *bonâ fide* in question. And by 4 & 5 Vict. c. 36, the provisions of the last mentioned act are extended to all Ecclesiastical Courts in England.

2. Remedy against Quakers.

Two Justices may order payment of Tithes or Church Rates.—By 7 & 8 Will. 3, c. 34, s. 4, where any Quaker shall refuse to pay or compound for his great or small tithes (e), or to pay any church rates, the two next justices of the peace for the same county (other than such as is patron of the church or chapel whence the tithes arise, or in any way interested in the tithes), upon the complaint of any parson, vicar, farmer, or proprietor of tithes, or churchwarden, who ought to have, receive, or collect the same, may, by warrant

(e) See 1 Geo. 4, st. 2, c. 6, s. 2, *infra*.

under their hands and seals, convene before them such Quaker, and examine upon oath the truth and justice of the complaint, and ascertain and state what is due and payable by such Quaker to the party complaining, and by order under their hands and seals direct and appoint the payment thereof, so as the sum ordered do not exceed 10*l.* (*f*) Upon refusal to pay according to such order, any one of the said justices may, by warrant under his hand and seal, levy the money ordered to be paid by distress and sale of the goods of the offender, together with the necessary charges of distraining, to be allowed by the justice. An appeal is given from the order to the next quarter sessions; and no proceedings are to be removed by *certiorari*, or other writ out of any court whatever, unless the title of such tithes shall be in question.

By *sect. 5*, in case any such appeal be made, no warrant of distress shall be granted, until after the appeal be determined.

By 1 Geo. 1, st. 2, c. 6, s. 2, the remedy given by the above act is extended to the recovery of "any tithes or rates, or any customary or other rights, dues, or payments belonging to any church or chapel, which of right by law and custom ought to be paid, for the stipend or maintenance of any minister or curate officiating in any church or chapel;" and any two justices of the same county or place (other than such as is patron of the church, or interested in the tithes) are authorized to summon, in writing under their hands and seals, by reasonable warning, such Quaker; and after his appearance, or upon default of appearance, the warning or summons being proved before them upon oath, the justices may proceed to hear and determine the complaint, and make such order as is directed in the above act, and also order such costs as they shall think reasonable, not exceeding 10*s.*

This last statute, it will be perceived, authorizes any two justices to hear and determine the complaint, instead of limiting the jurisdiction, as in the 7 & 8 Will. 3, c. 34, s. 1, to the two *next* justices; but it does not say anything about the power of distress, which, by the 7 & 8 Will. 3, c. 34, s. 4, is limited to "any one of the said justices," that is, the two *next* justices who were authorized to make the order. To obviate therefore any possible objection to the warrant of distress, it will be advisable that one of the two justices who make the order should be one of the next justices not interested in the matter, and that that justice should issue the warrant of distress.

(*f*) See 53 Geo. 3, c. 127, s. 6, *post*, p. 1302.

It is observable, also, that neither of the above statutes relating to the tithes of Quakers limits any time for detaining the distress before the sale; so that the goods distrained may be sold immediately. For the 27 Geo. 2, c. 20, s. 1, which regulates the sale of distresses under magistrates' warrants, and directs that it shall not be in *less* than four days, expressly excepts the provisions in the two above-mentioned acts relating to the tithes of Quakers. It is further to be remarked, that the 7 Geo. 4, c. 15(g), which enables two justices of an adjoining county to act, where the justices of any city or town are patrons of the church, does not apply to either of the above statutes relating to the tithes of Quakers.

Extension of the above Acts.—By the 53 Geo. 3, c. 127, s. 6, the provisions of the two above-mentioned acts are extended to any value not exceeding 50*l.*; and one justice may receive the original complaint, and summon the parties before two justices.

Prohibition of other proceedings.—By 5 & 6 Will. 4, c. 74, s. 1, no suit or other proceeding shall be instituted in any Court having cognizance of such matter in respect of any great or small tithes, moduses, compositions, rates, or other ecclesiastical dues or demands whatever, under the value of 50*l.*, withheld by any Quaker; but this prohibition is not to extend to any case in which the actual title to any tithe, &c., or the rate of such composition or modus, or the actual liability or exemption of the property to or from any such tithe, composition, &c. shall be *bonâ fide* in question. And by 4 & 5 Vict. c. 36, the provisions of the last-mentioned act are extended to all Ecclesiastical Courts in England.

Distress for Rent Charge under Tithe Commutation Act.—By the 6 & 7 Will. 4, c. 71, for the commutation of tithes in England and Wales, it is provided by *sect.* 84, that in all cases in which it shall be necessary to make any distress for a rent charge under that act, in respect of any lands in the possession of any Quaker, the same may be made upon his goods, chattels, or effects, whether on the premises or elsewhere, but nevertheless to the same amount only, and with the same consequences in all respects as if made on the premises; and in all such cases the goods distrained shall be sold, without its being necessary to impound or keep the same. And it is also provided, that no writ under the provision of that act shall be issued for assessing or recovering any rent charge payable under

the act, in respect of any lands in the possession of any Quaker, unless the same shall be in arrear and unpaid for the space of forty days next after any half-yearly day of payment, without the person entitled thereto being able to find goods, either on the premises or elsewhere, liable to be distrained, sufficient to satisfy the arrears to which such lands are liable, together with the reasonable costs of such distress.

3. *Jurisdiction of Justices under the Acts for the Commutation of Tithes.*

Distress for Expenses of apportionment of Rent Charge.—By the above-mentioned act, 6 & 7 Will. 4, c. 71, it is enacted by sect. 76, that if any difference shall arise touching the expenses of or incident to making any apportionment of a rent charge among the lands of a parish, according to the provisions of that act, or touching the share of such expenses to be paid by any person, the tithe commissioners, or some assistant commissioner under that act, may certify under their or his hand the amount to be paid by such person; and in case he shall neglect or refuse to pay his share so certified to be payable by him, then, upon the production of such certificate before any two justices of the peace for the county or other jurisdiction wherein the lands mentioned in the agreement or award of apportionment are situate, the justices are required, by warrant under their hands and seals, to cause the same and the costs of the distress to be levied by distress and sale of the goods of the person liable to pay the same, rendering the surplus (if any), after deducting the charges of the distress and sale, to the person distrained upon.

Enforcing payment of contribution to Rent Charge.—By 5 & 6 Vict. c. 54, s. 16, in case any land charged with one amount of rent charge shall belong to two or more landowners in several portions, and the owner of any one of such portions, or his tenant, shall have paid the whole of such rent charge, or any portion thereof, greater than shall appear to him to be his just proportion, and contribution thereto shall have been refused or neglected to be made by any other of the said landowners, or his tenant, after a demand in writing made on them, or either of them, for that purpose; any justice acting for the county or other jurisdiction in which the land is situated, upon the complaint of any such landowner, or his tenant, or agent, may summon the owner so refusing or neglecting to make contribution, or his tenant, to appear before any two justices, who, upon proof of

the demand and service of the summons, as thereafter provided, whether or not the party shall appear, shall examine into the merits of the complaint, and determine the just proportion of the rent charge so paid, which ought to be contributed by the landowner of such other portion of the land, and by order under their hands and seals shall direct the payment by him of what shall in their judgment be due and payable in respect of such liability to contribution, with the reasonable costs and charges of such proceedings, to be ascertained by such justices; and thereupon the complainant may take the like proceedings for enforcing payment of the amount of the contribution and costs, and with the like restriction as to the arrears recoverable, as are given to the owner of the rent charge by the 6 & 7 Will. 4, c. 71, or by that act for enforcing payment of the rent charge.

Service of Summons, &c.—By sect. 17, service of the said demand in writing and summons upon any person occupying or residing on the land chargeable with the rent charge, or in case no person shall be found thereon, then affixing the same in some conspicuous place on the land, shall be deemed good service of such summons, or other proceeding.

And by sect. 20, the act is to be construed with and as part of the act of 6 & 7 Will. 4, c. 71.

1. *Complaint for Tithes due from any person, on 7 & 8 Will. 3, c. 6, and 53 Geo. 3, c. 127 (h).*

To J. P., esquire, one of her Majesty's justices of the peace in and for the county of —.

A. B., of —, in the said county, clerk, complaineth, that he, the said A. B., did, by the space of twenty days and upwards, before the day of the date hereof, demand of C. D., of —, in the parish of —, in the county aforesaid, farmer, the tithes justly become due, within two years now last past, from the said C. D. unto him the said A. B., to the value of £—; and that the said C. D. did, upon the said demand, refuse, and doth yet refuse to pay, and hath not paid the same, nor any part thereof, to the said A. B., or any person on his behalf; The said complainant therefore prayeth such redress in the premises as to you shall seem meet, and as to the law doth appertain. Signed the — day of —, in the year of our Lord 1843.

A. B.

2. *Summons thereon.*

County of } To the constable of —, in the said county.
—.

Whereas complaint in writing hath been made unto me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, by A. B., of, &c. in the

said county, clerk, that C. D., of, &c. in the said county, farmer, hath for above the space of twenty days before the time of the said complaint so made unto me as aforesaid, refused to pay unto the said A. B., and hath not yet paid, the tithes arising in the said parish of —, justly due from the said C. D. to the said A. B.: These are therefore to command you forthwith, upon sight hereof, to summon the said C. D. to appear before me, and such other of her Majesty's justices of the peace for the said county as may be present, at —, on —, the — day of —; at the hour of — in the forenoon of the same day, to answer unto the said complaint: And be you then there to certify what you shall have done in the premises. Given under my hand and seal, at —, in the said county, the — day of —, in the year of our Lord 1843.

3. *Order thereon for payment of the Tithes.*

County of } Whereas complaint in writing hath been made unto me, J. P., esquire,
 —. } one of her Majesty's justices of the peace in and for the said county, by A. B., vicar of the parish of —, in the said county, that C. D., of, &c. in the county aforesaid, farmer, did refuse for the space of twenty days next before the time of the said complaint, to pay the tithes arising in the said parish, and justly due from the said C. D. to the said A. B.: I, the said J. P., did therefore duly summon the said C. D. to appear before me, and such other of her Majesty's justices of the peace for the said county as might be present this day, at —, in the said county, to answer unto the said complaint: And the said C. D. having this day appeared before me and W. P., esquire, one other of her Majesty's justices of the peace in and for the said county, (neither of us, the said justices, being the patron of the parish church of —, nor in any way interested in the said tithes), we, the said justices, did duly examine the truth and justice of the said complaint upon oath, and we do thereupon find that there is justly due from the said C. D. to the said A. B. the sum of £ —, being the value of the said tithes, which have become due from the said C. D. within two years last past: And we do therefore adjudge and order the said C. D. to pay the said sum unto the said A. B., and also the sum of 10s., for the costs and charges of the said A. B. in proceeding against the said C. D. for the recovery of his said tithes. Given under our hands and seals, at, &c. in the said county, the — day of —, in the year of our Lord 1843.

4. *The like for payment of a Composition.*

County of } Whereas on the — day of —, complaint in writing was made
 —. } unto me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, by A. B., of, &c. gentleman, lessee of the rector of the said parish of —, that C. D., of, &c. has failed in the true payment of a certain composition made with him for the tithes of hay and agistment, which became due and payable within two years then last past from the said C. D. to the said A. B., as lessee as aforesaid, and which said composition was demanded from the said C. D. twenty days and upwards before the making of the said complaint; whereupon I, the said J. P., granted a summons in writing under my hand and seal, setting forth the said complaint, and requiring the said C. D. to appear before me, and such other justice of the peace for the said county as should be then present, at, &c. in the same county, on the — day of —, at — o'clock in the forenoon, to answer the said complaint:

And the said C. D. having this day appeared before me, and W. P., esquire, one of her Majesty's justices of the peace in and for the said county, in pursuance of the said summons: Now we, the said justices (being neither of us patron of the parish church of, &c. as aforesaid, nor in any way interested in the said tithes), having duly examined the truth of the said complaint upon oath, and having heard the said C. D. in his defence [*or where the party has not appeared*, "and the said C. D. not having appeared before us, in pursuance of the said summons, and the due service thereof having been duly proved on oath before us"], do find and determine that there is justly due from the said C. D. to the said A. B., as lessee as aforesaid, the sum of £—, for the amount of the composition so made as aforesaid, for the said tithes of hay and agistment, and that the same have become due and payable within two years before the time of making the said complaint, that is to say, on the — day of —: And we do therefore ~~adjudge~~ judge and order the said C. D. to pay, or cause to be paid, unto the said A. B. the sum of £—, and also the sum of 10s. for his costs and charges in making and prosecuting the said complaint. Given under our hands and seals, at, &c. in the said county, the — day of —, in the year of —.

5. Warrant of Distress thereon.

County of } To the constable of —, in the said county, and to the churchwardens
— } of the parish of —, in the said county, and to every of them.

Whereas upon the complaint in writing of A. B. vicar of the parish of —, in the county aforesaid, C. D. of, &c. in the county aforesaid, farmer, hath been duly summoned to appear before us, J. P. and W. P. esquires, two of her Majesty's justices of the peace in and for the said county, to be examined by us touching the nonpayment of the tithes due from him unto the said A. B.; and whereas we, the said justices, being neither of us patron of the parish church of — aforesaid, nor in any way interested in the said tithes, have duly examined into the truth and justice of the said complaint, and have ordered the said C. D. to pay unto the said A. B. the sum of £—, being the value of the said tithes which have become due from the said C. D. to the said A. B. within two years next before the said complaint so made unto us as aforesaid, together with the sum of 10s. for the costs and charges of the said A. B. for the recovery of his said just dues; which said sums make in the whole the sum of £—: And whereas it appeareth unto us, the said justices, that the said C. D. had due notice of our said order for the space of ten days (*i*) and upwards before the day of the date hereof, but hath refused to pay, and hath not yet paid, the said sum of £—, nor any part thereof: These are therefore to command you jointly and severally, that you, or some one of you, do forthwith distrain the goods and chattels of the said C. D.; and in case the said sum of £—, together with your reasonable charges of making and detaining the said distress, be not paid or tendered to be paid by the said C. D. in three (*k*) days next after such distress made, that then you do make public sale of the said goods and chattels so distrained as aforesaid, and out of the money arising from such sale, that you pay or cause to be paid unto the said A. B. the said sum of £—, and thereout also deduct and detain your reasonable charges of making, keeping, and selling the said distress; and if any overplus shall remain

(i) See 7 & 8 Will. 3, c. 6, s. 3, *ante*, p. 1298.

(k) *Ibid*.

after such payment and deduction as aforesaid, that then you do render the same unto him the said C. D. upon demand. Given under our hands and seals, at, &c. in the said county, the — day of —, in the year of our Lord 1843.

6. *Complaint for Tithes due from a Quaker, on 7 & 8 Will. 3, c. 34; 1 Geo. 1, st. 2, c. 6; and 53 Geo. 3, c. 127 (1).*

To J. P. esquire, one of her Majesty's justices of the peace in and for the county of —.

A. B. rector of the parish church of —, in the said county, complaineth, that C. D. of, &c. in the county aforesaid, farmer, being a person commonly called a Quaker, hath refused to pay unto the said A. B., or to compound for the great and small tithes belonging to the parish church of — aforesaid, and justly due to the said A. B. from the said C. D. The said complainant therefore prayeth such redress in the premises as to you shall seem meet, and as to law doth appertain. Signed the — day of —, in the year of our Lord 1843.

A. B.

7. *Summons thereon.*

County of }
— } To the constable of —, in the said county.

Whereas A. B. clerk, rector of the parish church of —, in the said county, hath complained unto me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, that C. D. of, &c. in the county aforesaid, farmer, being a person commonly called a Quaker, hath refused to pay unto the said A. B., or to compound for, the great and small tithes belonging to the said parish church of —, and justly due to the said A. B. from the said C. D.: These are therefore to require you forthwith to summon the said C. D. to appear before me and such other of her Majesty's justices of the peace in and for the said county as may be present at —, in the said county, on —, the — day of —, at the hour of — o'clock in the forenoon of the same day, to answer unto the said complaint. And be you then there to certify what you shall have done in the premises. Given under my hand and seal, at, &c. in the said county, the — day of —, in the year of our Lord 1843.

8. *Order thereon for Payment.*

County of }
— } Whereas complaint hath been made unto me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, by A. B. rector of the parish of —, in the said county, that C. D. of, &c. in the county aforesaid, farmer, being a person commonly called a Quaker, hath refused to pay or to compound with the said A. B. for his great and small tithes belonging to the parish church of — aforesaid, and justly due unto the said A. B.: And the said C. D. having been duly summoned to appear before me and such other of the justices of the said county as might be present here this day, and having now appeared before me, and W. P. esquire, one other of her Majesty's justices of the peace in and for the said county [or if the party does not appear, " and the said C. D. not having appeared before us, in pursuance of the said summons, and the due service thereof having been duly

proved on oath before us"] we the said justices, being neither of us patron of the parish church of — aforesaid, nor in any way interested in any of the said tithes, have duly examined into the truth of the said complaint upon oath, and do find that there is justly due from the said C. D. to the said A. B. in respect of the said tithes the sum of £—: We do therefore order and direct the said C. D. to pay, or cause to be paid, unto the said A. B. the said sum of £—, and also the further sum of 10s. for his reasonable costs and charges concerning the premises; which said sums make together the sum of £—. Given under our hands and seals, at —, in the said county, the — day of —, in the year of our Lord 1843.

9. Warrant of Distress thereon.

County of }
 — } To the constable of —, in the said county.

Whereas upon the complaint of A. B. rector of the parish church of —, in the said county, C. D. of, &c. in the county aforesaid, farmer, being a person commonly called a Quaker, hath been duly summoned to appear before J. P. and W. P. esquires, two of her Majesty's justices of the peace in and for the said county, to be examined touching the nonpayment of his great and small tithes belonging to the parish church of — aforesaid, due from the said C. D. unto the said A. B.: And whereas the said justices, upon due examination into the truth of the said complaint, by writing under their hands and seals, have ordered the said C. D. to pay unto the said A. B. the sum of £— for such his tithes so due from him as aforesaid, and also the sum of 10s. for the charges of the said A. B. in recovering the same; which said sums make together the sum of £—: And whereas it appeareth unto me, J. P. esquire, being one of the said justices, and also being one of the two next justices of the same county in which the said parish church of — is situate as aforesaid, and not being patron of the said church, nor in any way interested in any of the said tithes, that the said C. D. hath had due notice of the said order, but hath refused to pay and hath not paid the said sum of £—, nor any part thereof: These are therefore to authorize and command you, that you do forthwith levy the aforesaid sum of £— by distress and sale of the goods and chattels of the said C. D., and out of the money arising from such sale, that you do pay unto the said A. B. the said sum of £—, and thereout also deduct your necessary charges of distraining; and if any overplus shall remain after such payment and deduction as aforesaid, that you do render the same unto the said C. D. Given under my hand and seal, at —, in the said county, the — day of —, in the year of our Lord 1843.

Tobacco.

And see *Smuggling*.

GROWERS of Tobacco to be presented.—By 22 & 23 Car. 2, c. 26, s. 2 (m), for preventing the planting of tobacco in England,

(m) This statute is continued by the 5 Geo. 1, c. 11, and only so much of it is repealed by the 6 Geo. 4, c. 105, as

relates to the plantation trade, that is, the trade with the colonies or other places from which the article is imported.

all justices of the peace are required, a month before every quarter sessions, to command all constables to make diligent search and inquisition what tobacco is then sown, set, planted, growing, curing, cured, or made, within their several and respective limits and jurisdictions, and by whom; and to make a true presentment in writing upon oath, at the next quarter sessions, of the names of all such persons as have sown, set, planted, cured, or made any tobacco, and what the full quantity of land is or was sown, set, or planted therewith, and who are the immediate tenants or present occupiers of the land, who shall be deemed planters thereof.

By *sect. 3*, this presentment is to be received and filed by the clerk of the peace in open sessions, and shall then be a sufficient conviction in law of any person so presented; unless, after notice given to him of such presentment by the delivery of a copy of it to him, or by leaving such copy at his dwelling-house or usual place of abode, in the presence of one witness, ten days at the least before the quarter sessions, the party shall, at the quarter sessions next after such notice, traverse such presentment, and find sufficient sureties for trying such traverse at the next following quarter sessions.

Tobacco growing may be destroyed.—By *sect. 4*, all constables, within fourteen days after warrant from two justices, calling to their assistance any other persons, are required to destroy all tobacco, wherever planted and growing; under the penalty (by *sect. 5*) of 5s. for every rod of ground so planted, recoverable in any of the courts at Westminster.

Penalties for refusing to aid, or resisting a Constable.—By *sect. 6*, if any person shall refuse or neglect to aid or assist any constable, he is liable, on conviction before two justices, to a penalty of 5s., to be levied by distress; and in default of distress, to be committed to the common gaol for one week.

By *sect. 7*, if any person shall forcibly resist any constable, he is liable, on the like conviction, to a penalty of 5*l.*, to be levied by distress; in default of which he is to be committed for three months.

Exceptions.—By *sect. 9*, the planting of tobacco in any physic garden of either university, or in any other private garden for physic or chirurgery only, is exempted from the provisions of the act, so as the quantity planted exceed not one-half of a pole in any garden.

Penalty for hawking Tobacco.—By 5 & 6 Vict. c. 93, s. 13, no person shall hawk or sell, or offer for sale, any tobacco or snuff of any description in any house or premises, or in or about the streets or

highways or other places, or in any other manner or place whatsoever, except as a licensed manufacturer of, or dealer in, or retailer of tobacco, in his entered premises, on pain of forfeiting all tobacco and snuff in his possession, and 100*l*. And any officer of excise or customs may arrest and detain such person, and convey him before one justice of the peace residing near to the place where such person shall be arrested and detained, who is required forthwith to hear and determine what shall be then and there alleged against such person, and to convict him, on proof of the offence by the oath of one credible witness; and the person so convicted shall immediately pay the sum of 100*l*., or some mitigated amount, not being less than one-fourth part thereof; in default of which the justice is required, by warrant under his hand, to commit the person so convicted to any gaol or prison of the county, to hard labour for three calendar months. But this is not to make liable to such penalty any servant or person duly employed by any licensed manufacturer or dealer to travel for orders, and producing samples in the due and ordinary course of business.

—◆—
Tolls—See *Highways, Turnpike Roads*.

—◆—
Training to Arms—See *Military Training*.

—◆— Transportation.

HARD Labour.—By the 5 Geo. 4, c. 84, the former laws relative to transportation are consolidated, and by the 18th *sect.* of that act every offender under sentence of transportation may be kept to hard labour while he shall remain in the common gaol, if his health shall permit, and one of the visiting justices shall give a written order to that effect.

Returning from Transportation.—By *sect.* 22, if any offender, who shall have been sentenced or ordered to be transported or banished, or who shall have agreed to transport or banish himself on certain conditions, shall be afterwards at large, without some lawful cause, before the expiration of his term, he was liable to suffer death. But now, by the 4 & 5 Will. 4, c. 67, the capital punishment is abolished, and the offender is punishable with *Transportation for life, and to be previously imprisoned, with or without hard labour, not exceeding*

four years. And any one who aids or abets, counsels or procures, the commission of such offence, is liable to the same punishment.

Rescuing Offenders.—By the same *sect.* of 5 Geo. 4, c. 84, if any person shall rescue, or attempt to rescue, or assist in rescuing or attempting to rescue, any such offender from the custody of any sheriff or gaoler, or other person, conveying, removing, transporting, or reconveying him; or shall convey, or cause to be conveyed, any disguise, instrument for effecting escape, or arms to such offender; the offence is punishable in the same manner as if the offender had been confined in a gaol or prison in the custody of the sheriff or gaoler for the crime of which such offender shall have been convicted.

Remedy for Prosecuting.—By the same *sect.* whoever shall discover and prosecute to conviction any such offender so being at large within this kingdom, is entitled to a reward of 20*l.* for every such offender so convicted.

Evidence.—By *sect.* 24, the clerk of the county, or other officer having the custody of the records of the court where such sentence or order of transportation shall have been passed or made, shall, at the request of any person, make out and give a certificate in writing signed by him, containing the effect and substance only of the indictment and conviction of the offender, and of the sentence or order for his transportation, (not taking for the same more than 6*s.* 8*d.*,) which certificate shall be sufficient evidence of the conviction and sentence. Every such certificate, if made by the clerk or officer of any Court in Great Britain, shall be received in evidence, upon proof of the signature and official character of the person signing the same; and if made by the officer of any Court out of Great Britain, shall be received in evidence, if verified by the seal of the county, without further proof.

Penalty for supplying Spirituous Liquors.—By 1 Will. 4, c. 39, s. 6, if any person, in contravention of the existing rules and regulations for the government of any place of confinement for male offenders under sentence or order of transportation, shall carry or bring, or attempt or endeavour to carry or bring, into any such place, or shall supply, or cause to be supplied, to any person there confined as an offender, any spirituous or fermented liquors, any officer belonging to such place may apprehend such person and carry him before a justice, who is empowered to hear and determine the offence in a summary way; and upon conviction to commit him to the com-

men gaol or house of correction not exceeding three months, unless he shall immediately pay down such sum not exceeding 20*l.*, and not less than 10*l.*, as the justice shall impose upon him; one moiety whereof is to be paid to the informer, and the other to be applied to the maintenance of the place employed for the confinement of offenders under sentence of transportation.

And see further 2 Deac. Crim. Law, 1305.

Commitment, on the 5 Geo. 4, c. 84, s. 22, of a party for returning from Transportation.

County of } To the constable of — in the said county, and to the keeper of the
— common gaol at — in the said county.

Whereas A. B. hath been this day charged before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, on the oath of C. D., of, &c., and others, for that he the said A. B. having been transported beyond the seas for the term of — years, in pursuance of a certain judgment against him [*here state shortly the substance of the offence for which he was transported*], feloniously and unlawfully, and without any lawful cause or excuse was, on the — day of — instant, and before the expiration of the said term of — years, at large at — in the county aforesaid, against the form of the statute in such case made and provided: These are therefore to command you, the said constable, in her Majesty's name, forthwith to convey and deliver into the custody of the said keeper of the said common gaol the body of the said A. B., together with this warrant: And you, the said keeper, are hereby required to receive the said A. B. into your custody in the same common gaol, and him there safely to keep, until he shall be thence delivered by due course of law. Herein fail you not. Given under my hand and seal, this — day of —, in the year of our Lord 1843.

Treason.

THE 25 Edw. 3, st. 5, c. 2, declares what offences only thenceforth shall be held to be treason; comprehending the crime under seven distinct branches. 1. When a man doth compass or imagine the death of the King, of his Queen, or of their eldest son and heir; 2. If a man do violate the King's companion, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir; 3. If a man do levy war against the King in his realm; 4. If a man be adherent to the King's enemies in his realm, giving to them aid or comfort in the realm, or elsewhere; 5. If a man counterfeit the King's great or privy seal; 6. If a man counterfeit the King's money, or bring false money into the realm counterfeited to the money of England, knowing the money to be false, to merchandize and make thereof withal; and 7. If a man slay the chancellor, treasurer, or the King's justices of the one bench or the other, justices in eyre, or

justices of assize, and all other justices assigned to hear and determine, being in their places doing their offices.

The 5th provision of the above statute, as to counterfeiting the King's great or privy seal, and also a provision in the 1 Mary, c. 6, on the same subject, are repealed by the 11 Geo. 4 & 1 Will. 4, c. 66, s. 31; and by *sect. 2* of that statute, if any person shall forge or counterfeit the great seal of the United Kingdom, his Majesty's privy seal, any privy signet of his Majesty, his Majesty's royal sign manual, any of his Majesty's seals appointed by the twenty-sixth article of the Union to be kept, used, and continued in Scotland, the great seal of Ireland, or the privy seal of Ireland; the offender is guilty of high treason, punishable with death. But nothing contained in the acts of the 7 & 8 Will. 3, c. 3, or 7 Anne, c. 27 (*n*), shall extend to any indictment, or any proceeding thereupon, for any of the treasons last above mentioned.

The 6th provision of the above statute, as to counterfeiting the King's money, and bringing false money into the realm, is repealed by the 2 Will. 4, c. 34, s. 1, by which statute the offence is now made a *Felony*. See *Coin*.

Under the 1st provision, as to compassing or imagining the death of the King, it is held that a Queen regnant is within the words of the statute; as she is invested with royal power, and entitled to the allegiance of her subjects (*o*). And yet, in the reign of Queen Mary, it was thought necessary to pass a statute, 1 Mary, st. 2, c. 6, declaring it to be high treason to forge or counterfeit the *Queen's* sign manual, privy signet, or privy seal.

Limitation as to Time.—By the 7 & 8 Will. 3, c. 3, ss. 5, 6, no person shall be prosecuted for high treason, unless within three years after the offence committed; except in the case of designing any assassination on the body of the King.

Witnesses.—By the same statute, *sect. 2*, no person shall be indicted but upon the oaths of *two* witnesses,—either both of them to the same overt act,—or one of them to one, and the other of them to another overt act of the same treason.

Attempts against the person next in succession.—By 1 Ann. st. 2, c. 17, if any person shall endeavour to deprive or hinder any person,

(*n*) These statutes relate to the limitation of time for prosecution, giving a copy of the indictment, list of witnesses, &c.

(*o*) 1 Hale, 101, 106; 4 Inst. 7; 4 Bla. Com. 76.

being the next in succession to the crown, according to the limitations of the act of settlement, from succeeding to the crown, and shall maliciously and directly attempt the same by any overt act; such offence shall be high treason.

Denying the authority of the King and the Parliament.—By the 6 Ann. c. 7, s. 1, if any person shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm, that the Kings of this realm, with the authority of parliament, are not able to make laws and statutes to bind the crown and the descent thereof; such person is also guilty of high treason.

And by *sect. 2*, if any one shall maliciously and directly, by preaching, teaching, or advised speaking, declare, maintain, and affirm the same position, he incurs the penalty of *præmunire*. But by *sect. 3*, no person shall be prosecuted for any words spoken, unless information be given upon oath to a justice within three days, and the prosecution be within three months after the information; and no person shall be convicted for any such words spoken, but by the oaths of two credible witnesses.

Publishing any Treasonable Printing or Writing.—By 36 Geo. 3, c. 7, s. 1, (made perpetual by 57 Geo. 3, c. 6,) if any person shall within the realm, or without, compass, imagine, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment or restraint, of the person of the King, or to deprive or depose him from the style, honour, or kingly name of the imperial crown of this realm, or of any other of his Majesty's dominions or countries; or to levy war against his Majesty within this realm, in order, by force or constraint, to compel him to change his measures or counsels, or in order to put any force or constraint upon, or to intimidate or overawe both houses, or either house of parliament, or to move or stir any foreigner or stranger with force to invade this realm, or any other his Majesty's dominions or countries under the obedience of his Majesty; and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by any overt act or deed, being legally convicted thereof upon the oaths of two lawful and credible witnesses upon trial, or otherwise convicted or attainted by due course of law; every such person shall be deemed, declared, and adjudged to be a traitor, and shall suffer pains of death, and also lose and forfeit as in cases of high treason.

Uttering or Publishing seditious language.—By sect. 2, if any person shall, within that part of Great Britain called England, maliciously and advisedly, by writing, printing, preaching, or other speaking, express, publish, utter, or declare any words or sentences to incite or stir up the people to hatred or contempt of the person of his Majesty, his heirs and successors, or the government and constitution of this realm, as by law established; he is liable to such punishment as may by law be inflicted in cases of *high misdemeanors*. If any person shall, after being so convicted, offend a second time, and be thereupon convicted before any commissioner of oyer and terminer or gaol delivery, or in his Majesty's Court of King's Bench, he may be adjudged, at the discretion of the Court, either to suffer such punishment as may now by law be inflicted in cases of *high misdemeanors*, or to be *banished* the realm, or *transported not exceeding seven years*. But by sect. 4, no person shall be liable to the penalties in the last section, unless he be prosecuted within six calendar months next after the offence committed, and the prosecution be brought to trial or judgment within the first term, sittings, assizes, or sessions, in which, by the course of the Court wherein such prosecution shall be depending, the prosecutor could bring on such trial, or cause such judgment to be entered, or in the term, sittings, assizes, or sessions which shall next ensue; unless the Court in which such prosecution shall be depending, or before which such trial ought to be had, shall, on special ground stated by motion in open Court, think fit to enlarge the time for the trial thereof, or unless the defendant shall be prosecuted to outlawry. And no person shall be convicted but by the oaths of two credible witnesses.

Punishment.—By 54 Geo. 3, c. 146, the punishment for high treason is, that the offender shall be drawn on a hurdle to the place of execution, and be there hanged by the neck until he be dead, and that afterwards the head shall be severed from the body, and the body, divided into four quarters, shall be disposed of as the Sovereign shall think fit.

Misprision of Treason.—Misprision of treason is the bare knowledge and concealment of the crime, without any degree of assent thereto; and this concealment becomes criminal, if the party apprised of the treason does not, as soon as conveniently may be, reveal it to some justice of the peace. The punishment for this offence is loss of the profits of lands during life, forfeiture of goods, and imprisonment

for life (*p*). But, if there be any probable circumstances of assent to the treason,—as if a man goes to a treasonable meeting, knowing beforehand that a conspiracy is intended against the King,—or, being in such company once by accident, and having heard such treasonable conspiracy, meets the same company again, and hears more of it, but conceals it,—this is an implied assent in law, and renders the concealer guilty of actual high treason; for whatsoever makes an accessory in felony, makes a principal in treason (*q*).

Where an attempt to injure the person of the Queen.—By 5 & 6 Vict. c. 51, s. 1, in all cases of high treason, in compassing or imagining any bodily harm, tending to the death or destruction, maiming, or wounding of the Queen, and in all cases of misprision of any such treason, where the overt act of such treason alleged in the indictment shall be any attempt to injure in any manner whatsoever the person of the Queen, the person charged with such offence shall and may be indicted, arraigned, tried, and attainted in the same manner, and according to the same course and order of trial in every respect, and upon the like evidence, as if such person stood charged with murder; and none of the provisions contained in the several acts of the seventh year of the reign of King William the Third, and the seventh year of Queen Anne, and the sixth year of King George the Fourth respectively, touching trials in cases of treason and misprision of treason respectively, shall extend to any indictment for high treason, in compassing or imagining the death or destruction of the Queen, or to any indictment for high treason in compassing and imagining any bodily harm, tending to the death or destruction, maiming, or wounding of the Queen, or for misprision of such treason, where the overt act or acts of such treason alleged in the indictment shall be such as aforesaid; but upon conviction upon such indictment, judgment shall be nevertheless given, and execution done, as in other cases of high treason; any law, statute, or usage to the contrary notwithstanding (*r*).

Shooting at her.—By *sect. 2*, if any person shall wilfully discharge, or attempt to discharge, or point, aim, or present at or near to the

(*p*) 1 Hale, 374.

(*q*) 1 Hale, 372; 1 Hawk. c. 20.

(*r*) The provisions of the 39 & 40 Geo. 3, c. 93, seem to have rendered the enactment in the 1st section of the above act

wholly unnecessary. For further information as to the indictment, evidence, and trial for high treason, see 2 Deac. Crim. Law, p. 1330, *et seq.*

person of the Queen, any gun, pistol, or any other description of fire arms, or of other arms whatsoever, whether the same shall, or shall not, contain any explosive or destructive material; or shall discharge, or cause to be discharged, or attempt to discharge or cause to be discharged, any explosive substance or material, near to the person of the Queen; or if any person shall wilfully strike, or strike at, or attempt to strike or strike at, the person of the Queen, with any offensive weapon, or in any other manner whatsoever; or if any person shall wilfully throw, or attempt to throw, any substance, matter, or thing whatsoever, at or upon the person of the Queen, with intent in any of the cases aforesaid to injure the person of the Queen, or with intent in any of the cases aforesaid to break the public peace, or whereby the public peace may be endangered, or with intent in any of the cases aforesaid to alarm her Majesty; or if any person shall, near to the person of the Queen, wilfully produce, or have, any gun, pistol, or any other description of fire arms, or other arms whatsoever, or any explosive, destructive, or dangerous matter or thing whatsoever, with intent to use the same to injure the person of the Queen, or to alarm her Majesty; every such person so offending shall be guilty of a *high misdemeanor*, punishable with *Transportation for seven years, or Imprisonment, with or without hard labour, not exceeding three years*, and during the period of such imprisonment to be publicly or privately whipped, as often and in such manner and form as the Court shall order and direct, not exceeding thrice.

Trees.

FOR setting fire to a plantation of trees, see **Arson**.

1. *Stealing them.*

2. *Malicious injuries to.*

1. *Stealing them.*

When growing in Parks, &c.—By 7 & 8 Geo. 4, c. 29, s. 38, if any person shall steal, or shall cut, break, root up, or otherwise destroy or damage, with intent to steal, the whole, or any part, of any tree, sapling, or shrub, or any underwood, respectively growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house; where the value of the articles stolen, or the amount of the injury done, shall

exceed 1*l.*; *Felony*; *Transportation for seven years, or imprisonment not exceeding two years, with or without whipping, if a male.*

When growing elsewhere.—If the tree, &c. stolen shall be growing elsewhere than in any of the situations before-mentioned, and the value of the thing stolen, or the amount of the injury done, shall exceed 5*l.*, *Felony*; *punishable as above.*

When the Value is under the above amount.—By sect. 39, if the articles stolen, or the injury done, shall amount to the value of 1*s.* at the least, then, wheresoever the tree, &c. may be growing, the offender, on conviction *before one justice*, shall, for the *first offence*, forfeit, over and above the value of the article stolen, or the amount of the injury done, not exceeding 5*l.* For a *second offence*, the party is to be imprisoned not exceeding twelve calendar months, with hard labour, and if the conviction takes place before *two justices*, they may order the offender, if a male, to be once or twice whipped after four days from the conviction. For a *third offence*, *Felony*, *punishable as above.*

In a conviction under this section, the *number* of trees stolen or destroyed should be stated, as a measure for ascertaining the amount of the damage which the justice is empowered to assess (*s*).

Having in Possession.—By sect. 41, if the whole, or any part, of any tree, sapling, or shrub, or any underwood, being of the value of 2*s.* at the least, shall, by virtue of a search warrant, be found in the possession of any person, or on his premises with his knowledge, and on being carried before a justice, he shall not satisfy the justice that he came lawfully by the same, he shall, on conviction, forfeit, over and above the value of the article so found, not exceeding 2*l.*

For the proceedings on summary conviction, see *ante*, title *Deer*,

2. *Malicious injuries to.*

When growing in Parks, &c.—By 7 & 8 Geo. 4, c. 30, s. 19, if any person shall unlawfully and maliciously cut, break, bark, root up, or otherwise destroy the whole, or any part, of any tree, &c., growing in any park, &c., or in any ground adjoining or belonging to any dwelling-house,—in case the amount of the injury done shall exceed 1*l.*; *Felony*; *punishable as above for stealing them.*

When growing elsewhere.—If the tree, &c. be growing in any

other situation, then, in case the amount of the injury done exceeds 5*l.*; *Felony; punishable as above.*

*When the Damage amounts to 1*s.*]*—By *sect. 20*, if the injury done amounts to 1*s.*, at the least, then, wherever the tree, &c. may be growing, the offender, on conviction before *one justice*, is liable to the same punishment as under 7 & 8 Geo. 4, c. 29, s. 39, for stealing them.

A party may be convicted under the general clause of this statute, *sect. 24* (see *ante*, title *Mischief*), of having wilfully and maliciously damaged growing wood to the value only of 6*d.*, although the above *sect. 20* imposes a penalty only, where the injury done is to the amount of 1*s.* (*t*)

For the proceedings on summary conviction under this last statute, see *ante*, *Mischief*.

1. *Conviction of a Person for cutting down Trees, with intent to steal them, under the 7 & 8 Geo. 4, c. 29, s. 39.*

County of —, } Be it remembered, that on the — day of —, in the year of
to wit. } our Lord 1843, at —, in the said county, A. B. is convicted before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, for that he, the said A. B., on the — day of — instant, at the parish of —, in the said county, did cut, break, root up, and damage two lime trees, two sapling oaks, and a large quantity, to wit, a cartload of underwood, then and there growing, and being the property of C. D., esquire, with intent to steal the same, thereby doing injury to the said C. D. to the amount of £—, against the form of the statute in such case made and provided: And I, the said J. P., do hereby adjudge the said A. B., for his said offence, to forfeit and pay the sum of £—, and the further sum of — for the amount of the injury so done as aforesaid, and also the sum of — for costs: And in default of immediate payment of the said sums, to be imprisoned in the house of correction at —, in the said county, and there kept to hard labour for the space of one calendar month (*u*), unless the said sums shall be sooner paid: And I direct that the said sum of £— shall be paid (*x*) to E. H., one of the overseers of the poor of the parish of — aforesaid, in which the said offence was committed, to be by him applied according to the directions of the statute in such case made and provided: And that the sum of — shall be paid to the said C. D.: And I order that the sum of — for costs shall be also paid to the said C. D. Given under my hand and seal, the day and year first mentioned.

2. *Conviction for maliciously cutting and damaging Trees, under the 7 & 8 Geo. 4, c. 30, s. 20.*

County of —, } Be it remembered, &c. [*as in the last form*], for that the said
to wit. } A. B., on the — day of — last, at the parish of —, in the

(*t*) *Reg. v. Dodson*, 9 Ad. & E. 704.

(*x*) See *sect. 66, ante*, p. 221, as to the

(*u*) See *sect. 67*, title *Beer*, *ante*, p. application of the penalty.
221, as to the term of imprisonment.

county aforesaid, did unlawfully and wilfully cut, break, bark, root up, and damage two saplin beech trees, six saplin horse-chesnut trees, six laburnum trees, and six shrubs, the property of C. D., esquire, then and there growing, thereby then and there doing injury to the said C. D. to the amount of 10s., against the form of the statute in such case made and provided: And I, the said justice, do therefore adjudge, &c. [*the same as in the last precedent*] (y).

—◆—

Trespass, Malicious.—See *Mischief*.

—◆—

—◆—

Truck System.—See *Servants and Workmen*, ante, p. 1087.

—◆—

Turnpike Roads.

And see *Highway*.

BY the 3 Geo. 4, c. 126, all former general turnpike acts were repealed, and the law on this subject was consolidated; but there have been various subsequent general turnpike acts, by which a great many, if not most, of the provisions in this consolidating act have been again the subject of repeal and alteration. All the provisions of the 3 Geo. 4, c. 126 are declared (by *sect. 4*) to extend to all local acts then in force or thereafter to be passed; and by the 9 Geo. 4, c. 77, s. 19, all the provisions of that act, as well as those of all the intervening general acts, are declared also to extend to every local turnpike act.

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| <ol style="list-style-type: none"> 1. <i>Of the Trustees.</i> 2. <i>Of the Treasurer, Clerk, Surveyor, and other Officers.</i> 3. <i>Making, Improving, and Diverting Roads.</i> 4. <i>Repairs and Maintenance of the Roads.</i> 5. <i>Of Tolls, and Exemption from Tolls.</i> | <ol style="list-style-type: none"> 6. <i>Penalties for Injuries, Nuisances, and Annoyances.</i> 7. <i>Proceedings against Offenders, and Recovery and Application of Penalties.</i> 8. <i>Actions.</i> 9. <i>Forms of Proceedings.</i> |
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1. *Of the Trustees.*

The *appointment* of trustees is regulated by the provisions of the different local turnpike acts, but their duties and authority are defined by the general acts.

Justices.—By the 3 Geo. 4, c. 126, s. 61, all justices of the peace

(y) The penalty and the application of it, and the form of conviction, are precisely the same as in the 7 & 8 Geo. 4, c. 29, for cutting the trees with intent to steal them; see *Mischief*, ante, p. 614.

acting for the county through which any turnpike road passes, are to be added to the trustees or commissioners under the local act, and to have the same authority as if they had been named or elected trustees under the act. And by 4 Geo. 4, c. 95, s. 34, they need not take or subscribe any oath of qualification before they act. By 5 Geo. 4, c. 69, this privilege is extended to justices for any riding, division, or soke.

Qualification.].—By 3 Geo. 4, c. 126, s. 62, no other person can be a trustee, unless he shall be, in his own right, or in the right of his wife, in the actual possession or receipt of the rents and profits of freehold or copyhold lands of the clear yearly value of 100*l.*, or shall be heir apparent of the person possessed of such property, of the clear yearly value of 200*l.*; nor, by 4 Geo. 4, c. 5, s. 32, unless he shall, before two other trustees or commissioners, take the oath of qualification there set forth; under a penalty of 50*l.*, recoverable by any one who will sue for the same, in any of the Courts at Westminster. By the 5 & 6 Will. 4, c. 62, s. 10, a declaration to the same effect will now suffice, instead of an oath.

But by 3 Geo. 4, c. 126, s. 63, a man may act as a trustee of any turnpike roads, any part of which are situate within ten miles of the Royal Exchange, who is possessed of personal property to the amount of 10,000*l.* after payment of his debts.

Appointment of new Trustees.].—By sect. 66, when any trustee (except a justice of the peace) shall die, or by bankruptcy, insolvency, or otherwise, become disqualified to act, or by writing under his hand refuse to act, the surviving or remaining trustees may appoint another qualified person in his room; but notice of the time and place of his election must be given by the clerk to the trustees, by affixing the same in writing upon all the toll-gates of the road for which they act, and by inserting it in one or more of the newspapers circulating in that part of the county where the road passes, fourteen days at least before every such meeting.

What a Disqualification.].—By 3 Geo. 4, c. 126, s. 64, no person can act as a trustee, who is personally interested, nor during the time he shall keep a victualling house, or other house of public entertainment, or who shall sell wine, cider, beer, ale, or spirituous or other strong liquors by retail, or who shall be a lessee or farmer of the tolls on any turnpike road; under the penalty of 50*l.*, recoverable in any of the Courts at Westminster, in which the party sued must prove that he is not disqualified. But no mortgagee or assign-

nee of any mortgage or other security, or any lender of money upon the credit of the tolls, or receiving interest thereout for the same, shall be deemed unqualified. And any trustees who are in the commission of the peace may act as justices in the execution of any turnpike act, except in such cases only wherein they shall be personally interested, otherwise than as a trustee, commissioner, mortgagee, assignee, lender of money, or holder of any security on the credit of the tolls.

But by 7 & 8 Geo. 4, c. 24, s. 1, no trustee is to be deemed personally interested, by reason of his having acted in making, altering, or diverting any turnpike road over or contiguous to any lands or tenements in his possession, or by reason of his having received any sum out of the tolls by way of purchase money, damages, rent, recompense, or satisfaction agreed upon or awarded to him for any lands, timber, or materials purchased or taken for making, diverting, or altering, or for the use of the road for which he shall act as trustee, or for a repository of materials, or for the damage of any inclosed lands in taking or carrying away materials.

With respect to what is an *acting* as a trustee, it has been held, that, where he was personally interested in the construction of a road opposite to his own house, and attended a meeting of trustees, and spoke upon the question of the mode of constructing the road, this was evidence to go to the jury of *an acting* as trustee, so as to subject him to the penalty (z).

Penalty for holding an Office of Profit, or being concerned in Contracts, &c.—By 3 Geo. 4, c. 126, s. 65, no trustee shall enjoy any office or place of profit under any act of parliament in execution of which he shall have been appointed or shall act as trustee; or be in any manner directly or indirectly concerned in any contract or bargain for making or repairing, or in any way relating to the road for which he shall act as trustee, or for building or repairing any toll house, toll gate, or weighing engine, or for supplying any materials for the use thereof; nor shall he let out for hire any waggon or other carriage, or any horse or team for the use of such road; nor by himself, or by any other person for or on his account, directly or indirectly, receive any sum of money to his use or benefit, out of the tolls, or shall sell any tools or implements for the road; under the penalty of 100*l.*, recoverable by any person who shall sue for the

(z) *Charlesworth v. Rudyard*, 1 C. M. & R. 498; 4 Tyrw. 824.

same. But there is the same exception from the penalty, as is contained in the above act of 7 & 8 Geo. 4, c. 24, s. 1, in the case of a trustee receiving money out of the tolls by way of purchase money, &c. And by 4 Geo. 4, c. 95, s. 37, no trustee is liable to the penalty, by reason of his being only a proprietor or shareholder in any canal or railway company, which shall contract for the carriage or conveyance of any materials for the repair of the road.

A trustee, who accepted the office of treasurer, but allowed another person to receive the tolls, and never made any profit of it himself, was held liable to the penalty, if the office yielded a profit; and if the average balance is such, as to induce a banker to allow interest on it to the trustee or his receiver, it must be considered as an office of profit (*a*). And where a trustee agreed to let his horses and cart, at the rate of 5s. per day, to a person who had contracted with the trustees to make certain improvements on the road, and the horses and cart were used on that part of the road where such improvements were intended to be made; it was held, that the trustee was liable to the above penalty (*b*).

Property vested in Trustees.—By 3 Geo. 4, c. 126, s. 60, the property in all the toll gates, toll houses, weighing machines, and other erections and buildings, lamps, and other things erected and provided under any turnpike act, and all materials, tools, and implements provided for repairing the road, and the scrapings of the road, are declared to be vested in the trustees; who are empowered to bring any actions or prosecutions for any injury or damage to the same, in all which proceedings it is sufficient to state generally such articles to be the property of the clerk to the trustees.

First Meeting.—By 3 & 4 Vict. c. 39, s. 2, where a sufficient number of trustees shall not meet on the day appointed by the act for their first meeting, or shall not meet on the day appointed by adjournment for their meeting, or for want of a proper adjournment, then so many of the trustees as shall meet, or the major part of them, or in case no trustee shall be present, their clerk, or in case of the death, resignation, absence, incapacity, neglect, or refusal of such clerk, then any five of such trustees may cause notice in writing to be affixed on all the turnpike gates then erected on the respective roads, or if no turnpike gate, then the like notice to be affixed in the most conspicuous place in one of the principal towns or places nearest

(*a*) *De Lane v. Hillcoat*, 9 B. & C. 310. (*b*) *Towsey v. White*, 5 B. & C. 123.

to which the roads directed to be repaired do lie, and also in some public newspaper circulated in the county in which the road shall be situate, at least ten days before the intended meeting, appointing such trustees to meet at the place where the preceding meeting was appointed to be held, or at the place directed for the first meeting, if no preceding meeting shall have been held. And the trustees, when met in pursuance of such meeting, may proceed to carry any local act into execution, in as ample and full a manner as they might have done if no such neglect had happened. And by 4 Geo. 4, c. 35, where the trustees appointed under any local act of parliament are not able to meet on the day appointed by the act for their first meeting, by reason that the day appointed is antecedent to the passing of the act, any three of them may meet on the fourteenth day after the passing of the act.

Annual Meetings.—By 3 & 4 Will. 4, c. 80, s. 2, the trustees of every turnpike road are required to hold a general annual meeting (c) on or before the 25th March in every year; of which, by 3 Geo. 4, c. 126, s. 69, twenty-one days' notice must be given, by inserting the same in some newspaper usually circulated in the county. At this meeting the trustees are to elect a chairman, to audit their accounts, and to report the state of the road. And by *sect. 78*, as soon as such accounts shall be allowed and signed by the trustees, the clerk is to make out forthwith a statement of the debts, revenues and expenditure received or incurred on account of the trust, in the form contained in the schedule; which statement, if approved by the majority of the trustees present, must be signed by the chairman of the meeting, and within thirty days thereafter be transmitted to the clerk of the peace of the county in which the road, or the major part thereof, shall lie; under a penalty of 50*l.* on the clerk to the trustees for any default, who is also required by 3 & 4 Will. 4, c. 80, s. 1, to transmit a copy of such annual statement to the secretary of state, within the like period, under the penalty not exceeding 10*l.*, nor less than 5*l.*, for any default, recoverable before a justice. By *sect. 3* of the last-mentioned act, the annual statement is to be made out of the debts, revenue and expenditure received or incurred on account of the trust, between the 1st January and the 31st December of the year preceding the year in which such

(c) There is a bill now pending in parliament, which proposes to abolish the annual meeting, and establish half-yearly finance meetings instead.

meeting shall be, and according to the form contained in the schedule to the act.

By 3 & 4 Will. 4, c. 80, s. 4, the clerk to the trustees must prepare and lay before the annual meeting an estimate, made out in the form contained in the schedule, of the probable expenditure of the trust for the current year, from the 1st January to the 31st December, under the penalty not exceeding 10*l.* nor less than 5*l.* for any neglect, recoverable before a justice.

General Meetings.—By 4 Geo. 4, c. 95, s. 39, the trustees may meet at such time and place on or near their respective roads as to them shall seem convenient, and may adjourn to any other time and place, at which meeting they must defray their own expenses, except not exceeding 10*s.* *per diem* for the use of the room, or 20*s.* if the road be within five miles of the Royal Exchange; and all orders must be made at some meeting held in pursuance of the local act, or the general acts, and no order can be made, unless the major part of the trustees present shall concur, the whole number present not being less than three. A chairman must, in the first instance, be appointed at every meeting, who, in case of an equal number of votes (including the chairman's vote), shall have the casting vote. No order at any meeting once made shall be revoked at any subsequent meeting, unless notice of the intention to make such revocation shall have been given by three trustees, by writing under their hands to the clerk, at a previous meeting holden for the same road, and entered in the book of proceedings of such meeting, and unless notice signed by two trustees shall have been affixed on all the turnpike gates upon such road, twenty-one days at least before such meeting, nor unless such revocation shall be agreed to be made by a greater number of trustees than concurred in the making of the order.

Meetings on emergencies.—By *sect.* 41, if it should be thought necessary, for the better execution of any turnpike act, that the trustees should meet before the time to which any meeting may be adjourned, any two trustees, or the clerk by an order in writing signed by two trustees, may give notice of such earlier meeting by advertisement in some newspaper circulated in the neighbourhood of the road, and affixed on all the turnpike gates on such road, expressing the time, place, and purpose of such earlier meeting, not being less than fourteen days after the publication of such notice. But no

other business than what is specified in such notice can be transacted at such meeting.

Proceedings at Meetings.—By 3 Geo. 4, c. 126, s. 72, all orders and proceedings of the trustees, together with the names of such as are present, are to be entered in a book kept by the clerk, and be signed by the chairman of the meeting; which orders and proceedings so entered and signed are to be deemed original orders and proceedings, and all entries so made may be read in evidence in all courts whatsoever.

Books of Account.—By sect. 73, the trustees are to order a book to be kept by their clerk, in which he is to enter true and regular accounts of all sums of money received, paid, and expended on account of the road, and of the several articles and things for which such money shall have been paid; which book is to be open to the inspection of the trustees, or any creditor on the tolls, without fee or reward, and the book must be produced by the clerk at all meetings of the trustees, under a penalty not exceeding 5*l.* on the clerk for any default. *The provision in this section, limiting the right of inspection to trustees and to creditors on the tolls, supersedes any more general power of inspection given by any local turnpike act (*d*).

By 9 Geo. 4, c. 77, all books kept for registering mortgages or assignments, and all entries therein, and all books containing the accounts and proceedings of the trustees, kept according to the directions of any local or general turnpike act, and made evidence thereby, shall be admitted in evidence in all courts, without proving the facts therein contained, unless such facts shall be first controverted, notwithstanding the repeal of the act under which the books were originally kept.

Personal liability of Trustees.—By 7 & 8 Geo. 4, c. 24, s. 2, every trustee, who shall order the expenditure of any money for any road not comprehended within the local act, or for any purpose not authorized by such act or any of the general acts, shall be personally liable to the trust for the repayment of the money. But, by sect. 3, no trustee shall otherwise be personally liable to the payment of any money expended for the road, nor shall execution issue against his goods, by reason of his having acted as trustee, or having signed any contract or security relating to the trust.

By 4 Geo. 4, c. 95, s. 61, the trustees are not personally liable to

(*d*) *R. v. North Leach Trustees*, 5 B. & Adol. 978.

the payment of any money, by reason of their having executed any mortgage, or other security made in pursuance of any turnpike act. And if any action, suit, or prosecution shall be brought against any trustee for any thing done by virtue of any general or local act, all the costs which he shall incur shall be defrayed out of the tolls.

To enable the trustees to avail themselves of these clauses of the above-mentioned acts, it is highly important that in any transaction relating to the borrowing of money for the purposes of the road, they should strictly comply with the requisitions of the statute. For where the chairman at a meeting of trustees signed a resolution that the plaintiff should be requested to make a temporary advance of 2000*l.* to the trust; and the money was accordingly advanced, but the plaintiff received no security by mortgage of the tolls, as prescribed by 3 Geo. 4, c. 126, s. 8; it was held, that the chairman was not exempted from personal responsibility by the 7 & 8 Geo. 4, c. 2, s. 3; for that the meaning of that enactment, coupled with the 4 Geo. 4, c. 95, s. 61, is, that trustees shall be protected, only, where they have pursued the form of security prescribed by the statutes (*e*). When trustees confine themselves to the act of parliament, and the application of the funds according to the provisions of the act, they are not personally liable; but when they make a contract with any person to carry on any work, as they must know whether there are funds to pay for it, and the person who contracts with them has no means of knowing, the trustees will in such case be considered as representing that there are funds, and will be bound to provide funds to pay the contractors (*f*).

Liability for torts.]—The trustees of a turnpike road are not, like private individuals, liable to an action for a consequential injury resulting from an act which they are authorized to do, if they do not act arbitrarily, carelessly, or oppressively in the performance of the work. Therefore, where the trustees, in the exercise of the power given them by the 3 Geo. 4, c. 126, s. 83, to improve any road, raised the road adjoining the plaintiff's pleasure ground, by which he sustained some damage and inconvenience, it was held that the trustees were not liable for such consequential injury (*g*).

So, where the trustees were authorized to cut drains in lands adjoining the roads, and a drain was cut by an order signed by a competent number of trustees, and according to the plan of a surveyor

(*e*) *Parrott v. Eyre*, 10 Bing. 283. * P. C. 341.

(*f*) *Higgins v. Levingstone*, 4 Dowl.

(*g*) *Boulton v. Crawther*, 2 B. & C. 703.

in land adjoining the plaintiff's, by which the latter was overflowed; it was held that the trustees, having acted to the best of their skill, and with the best advice, were not answerable for the damage which had accrued (*h*).

In like manner, where the trustees were empowered and required by a turnpike act to place lamps along the road, if they should think necessary, and to make contracts for the cleansing of the road, and to take a night toll for the purpose of enabling them to light and watch the same; and an injury happened to an individual in crossing the road at night, by falling over a heap of scrapings left on the road side, without any lights; the trustees were held not liable in an action for damages (*i*). And where the trustees contracted with a party for the cleansing of the road, and the labourers employed by him did the work so negligently as to injure a passenger; the trustees were held not liable; as the labourers could not be considered as in their employment, and no duty was imposed upon the trustees to see that the labourers employed by the contractor did not commit any nuisance (*h*). The principle, in fine, to be drawn from all the cases is this,—that where trustees or commissioners, under an act of parliament, order something to be done which is not within the scope of their authority, or are themselves guilty of negligence in doing that which they are empowered to do, they then render themselves liable to an action; but that they are not answerable for the misconduct of such persons as they are obliged to employ; and if any accident happens therefrom, the party injured must have his remedy against the person by whose negligence it was occasioned (*l*). And even where trustees are guilty of any omission to do what is required of them by an act of parliament, as in the instance of omitting to put up lamps where it is necessary along a turnpike road, an *action*, as we have seen, will not lie against them for any consequential injury sustained by a party. But, though not liable to an action, they are nevertheless subject to an *indictment* for any wilful breach of public duty (*m*).

Actions by and against Trustees.—By 3 Geo. 4, c. 126, s. 74, the trustees may sue and be sued in the name of any one of the trustees or of their clerk, and no action shall abate by the death or removal of such trustee or clerk, or by his act, without the consent of the

(*h*) *Sutton v. Clarke*, 6 Taunt. 29; 1 Marsh. 429.

(*i*) *Harris v. Baker*, 4 M. & S. 27.

(*h*) *Humphreys v. Mears*, 1 M. & R. 187.

(*l*) *Hall v. Smith*, 2 Bing. 166.

(*m*) *Harris v. Baker*, 4 M. & S. 29.

trustees. Every trustee or clerk shall be reimbursed out of the monies belonging to the turnpike road all such costs, as he shall be put unto by reason of his being so made plaintiff or defendant. And by *sect. 134*, in any action against a trustee, evidence of his having acted as such, together with the act of parliament by which he was appointed, or the order, or a copy of the order for his appointment or election, in case he was appointed or elected by the trustees, is sufficient proof of his being a trustee (*n*).

If a person named in a turnpike act as one of the trustees has acted as such, and has been recognized as a trustee by the plaintiff, the plaintiff will not be allowed to give evidence that the trustee has not taken the oath prescribed by the 3 Geo. 4, c. 126, s. 62, for the purpose of showing that he is not a good trustee (*o*). But by *sect. 64*, if a person be sued for acting as a trustee, without being qualified, the proof of qualification lies on the trustee.

Where one trustee was sued for an act done, in pursuance of an order signed by a *competent number* of trustees, the action was held to lie, notwithstanding *all* the trustees had not concurred in the order (*p*). By a memorandum of agreement between trustees of a turnpike road and N., the trustees agreed to let, and N. to take, the tolls for a year, at a certain rent; and N., as renter of the tolls, and D., as his surety, severally promised the trustees that N. should pay the rent at the appointed times; it was held, that the contract was several and not joint, and that the trustees could not sue the parties jointly for arrears of the rent (*q*). And where A. agreed in writing to pay the rent of the tolls which he had hired "to the treasurer of the commissioners," it was held, that no action for the rent could be maintained in the name of the treasurer; for that the contract was to pay to the commissioners through the medium of their officer (*r*).

2. *Of the Treasurer, Clerk, Surveyor, and other Officers.*

Disqualifications.—By 3 Geo. 4, c. 126, s. 75, no person shall be capable of holding any place of profit under any trustees of a turnpike road, who shall sell any wine, ale, spirituous liquors, or provisions, by retail.

Penalty on Officers for neglect.—By *sect. 136*, every constable,

(*n*) And see *Doe d. Baggaley*, 4 B. & Taunt. 29. Adol. 435.

(*q*) *Lee v. Nixon*, 1 Ad. & E. 201.

(*o*) *Pritchard v. Walker*, 3 C. & P. 212.

(*r*) *Piggott v. Thompson*, 3 Bos. & P.

(*p*) *Sutton v. Clarke*, 1 Marsh. 429; 147.

headborough, or tithingman, refusing or neglecting to put the act into execution, or to account for any penalty; and every surveyor, toll collector, and all other persons employed by the trustees, receiving salaries or rewards, who shall wilfully neglect, for the space of one week after any offence being to their knowledge committed, to lay information of it upon oath before a justice for the limit wherein such offence was committed, shall, upon due information made upon oath before a justice for the said limit, forfeit 5*l*.

Appointment of Officers.—By 4 Geo. 4, c. 95, s. 43, the trustees may by writing under their hands appoint such collectors of the tolls, clerks, treasurers, surveyors, and other officers, as they shall think necessary, and remove them and appoint others, and pay their salaries out of the monies arising from the turnpike road. This appointment must be stamped, if any salary or emolument appertains to it(*r*). By 9 Geo. 4, c. 77, s. 15, these officers are to hold their appointments, notwithstanding the local act may have expired or been repealed, until removed by the trustees under any subsequent act.

Restrictions as to Treasurer, Surveyor, and Clerk.—By 3 Geo. 4, c. 126, s. 76, the trustees are required to take sufficient security from the treasurer for the due and faithful execution of his office, before he shall enter upon it, and may also, if they think proper, take such security from any other officer.

By 4 Geo. 4, c. 95, s. 44, no clerk to the trustees, or his partner, or his clerk, can be appointed surveyor, or any surveyor, or his partner, be appointed clerk; and if any one shall accept both offices, or if any surveyor shall accept any other place of profit or trust under the trustees, he is liable to a penalty of 50*l*. to any one who shall sue for the same. And by *sect. 45*, the surveyor is liable to a like penalty, if he shall have any part, share, or interest in any contract or bargain for work, materials, tools, or other things, to be done or provided upon, for, or on account of any road or bridge under his care and management, or shall upon his own account, directly or indirectly, let to hire any team, or sell or dispose of any timber, stone, or other materials to be used, or in making or repairing any such road or bridge.

By the 7 & 8 Geo. 4, c. 24, s. 4, no clerk to the trustees, or his partner, or the clerk of himself or his partner, can be appointed treasurer, and no treasurer, &c. can in like manner be appointed

clerk; and if any person shall accept both these offices, or if one shall act as the deputy of the other, or in any manner officiate for the other, or if the treasurer shall hold any place of profit or trust under the trustees other than that of treasurer, he is liable to a penalty of 100*l.* to any one who shall sue for it.

Officers to account.—By 4 Geo. 4, c. 95, s. 47, all officers are bound to account to the trustees, when required by them to do so, and to produce proper vouchers for their payments, and pay over any money remaining in their hands; and if any officer makes default in this respect, or shall neglect or refuse, within ten days after being required by the trustees, to deliver up all the books papers and writings in his custody or power relating to the execution of any trust, any justice for the county in which any part of the road is situate, upon complaint made to him by or on behalf of the trustees, may by warrant under his hand and seal summon such officer to appear before him, and upon his appearing, or ~~not~~^{not} being to be found, may hear and determine the matter in a summary way, and settle the account, if produced. And if it shall appear to the justice, that any of the money which has been collected is in the hands of the officer, he may, by warrant under his hand and seal, cause the same to be levied by distress; and in default of distress, or of the party's appearance before the justice, or, if appearing, in case he shall refuse or neglect to account to the justice, or to deliver up the several vouchers and receipts relating to such accounts, or the books, papers and writings relating to the trust, the justice may, by warrant under his hand and seal, commit him to the common gaol or house of correction, until he shall have accounted for and paid the full amount of the money received by him, or compounded with the trustees and paid such composition in such manner as the trustees shall appoint, or until he shall have delivered up such books and papers, or made satisfaction in respect thereof to the trustees. But no person, who shall be committed for want of sufficient distress, shall be detained in prison longer than six calendar months.

And by 9 Geo. 4, c. 77, s. 14, all officers under any local act which may have expired, are required in like manner, under the same penalties, to account with the trustees under any new act.

Duties of Clerk.—By 3 & 4 Will. 4, c. 80, s. 1, the several clerks to the trustees are required to transmit to the Secretary of State copies of all general annual statements sent by them to the clerks of the peace, within thirty days after the same shall have been approved and

signed by the chairman of the annual meeting, under the penalty not exceeding 10*l.*, nor less than 5*l.*, for any default; and they are also required by *sect. 4*, under the like penalty, to prepare and lay before the annual meeting of trustees an estimate of the probable expenditure of the trust for the current year.

By *sect. 7*, where the trustees of any road shall have entered into a resolution to apply to parliament for the continuation of the local act, or for the alteration or enlargement of any of the powers of the act, or for an increase of the tolls, the clerk is also required immediately to transmit a copy of such resolution to the Secretary of State, together with a copy of any special clauses which the trustees may wish to be inserted in any new act, and also a statement of the increased tolls intended to be levied.

Penalty on Officers for not attending summons of Secretary of State.—By *sect. 5*, if any surveyor, treasurer, clerk, or other officer shall refuse or neglect to attend any summons of the Secretary of State for the purpose of inquiring into the method in which the roads are maintained and repaired, or to give full and satisfactory answers to any questions of such secretary, or to produce any book of account, document, or writing relating to the road; he is liable to a penalty not exceeding 20*l.*, nor less than 10*l.*, at the discretion of any justice before whom complaint shall be made.

Recovery of Penalties.—By *sect. 8*, all the above penalties are to be recovered under the powers and provisions of the 3 Geo. 4, c. 126.

The surveyor is not responsible to labourers for their wages, unless he makes himself personally liable; the trustees, or their treasurer, should be sued, or the particular officer appointed for that purpose by the act (*s*). But the surveyor, or any other officer or agent employed by the trustees, if guilty of negligence or misconduct, is liable for the consequences, although the act done be lawful, and warranted by the powers vested in the trustees; as if, in repairing or altering the road, he leaves unguarded during the night a trench, over which a passenger falls and breaks his legs (*t*). The clerk to the trustees is not subject to an execution against him personally, on a judgment against him, as clerk, under a provision in a local act allowing him to be sued instead of the trustees (*u*). A *mandamus* lies to admit a clerk, or any other officer who holds a valuable estate in his office under the general turnpike acts (*x*).

(*s*) *Pochin v. Pawley*, 1 Sir W. Bl. 670.

(*t*) *Hall v. Smith*, 2 Bing. 156.

(*u*) *Wormwell v. Hailstone*, 6 Bing. 668.

(*x*) *R. v. Cheshire Turnpike Road Trustees*, 5 B. & Ad. 438.

Duties and Liabilities of Collectors.—By 3 Geo. 4, c. 126, s. 52, if any collector shall permit any waggon, cart, or other carriage to be drawn or pass upon any turnpike road within his view, or with his knowledge, or to pass through any toll-gate or bar, with wheels of a less breadth or of a different construction, or drawn with a greater number of horses than allowed by the act, or without such names and descriptions painted thereon as are thereafter directed, and shall not, within a week, proceed to the recovery of the penalty thereby inflicted, or shall allow any coach, waggon, cart, or other carriage, or any passenger, to pass through any toll-gate at which such collector shall be stationed, without paying the toll payable, or shall be guilty of any other misconduct in his office; he is liable to a penalty not exceeding 5*l*.

By *sect. 54*, if any toll collector offends against the provisions of the act, whereby any penalty shall be incurred, and shall abscond or absent himself so as not to be found, any justice before whom he shall have been convicted,—or in case of his absconding previous to conviction, then any justice, on an examination of the circumstances, and ascertaining by the examination of witnesses that such offence has been committed,—may order and adjudge that the penalty incurred shall be paid by the lessee of the tolls under whom the collector shall act.

By 4 Geo. 4, c. 95, s. 30, every toll collector must place on some conspicuous part of the front of the toll-house, so that the same shall appear to public view, his christian and surname painted in black on a board with a white ground, each of the letters to be at least two inches in length, and of a breadth in proportion. And if he shall not place and keep such board, or shall demand and take a greater or less toll from any person than he shall be authorized to do, or a toll from any person who shall be exempt from the payment thereof, and who shall claim such exemption, or shall refuse to permit or suffer any person to read, or hinder any person from reading, the inscription on such board, or shall refuse to tell his christian and surname to any person who shall demand the same, on being paid the toll, or shall in answer to such demand give a false name, or shall refuse or omit to give to the person paying the toll a ticket denoting the payment, and naming and specifying the toll-gate at which such ticket has been delivered, and the toll-gates freed by such payment, or, upon the legal toll being paid or tendered, shall unnecessarily detain or wilfully obstruct, hinder, or prevent any passenger from passing through any toll gate, or shall make use of any scurrilous or

abusive language to any trustee, traveller, or passenger; he is liable to a penalty not exceeding 5*l*. And by *sect.* 50, no toll collector can be prosecuted by indictment for taking too much toll, but only before a justice of the peace.

A penalty cannot be enforced against a collector for taking toll from a party claiming an exemption, unless the ground for such exemption is expressly specified to the toll-gate keeper at the time the toll is demanded; although the nature of the exemption may be apparent from the substance, as manure, with which the cart is loaded (*y*).

By *sect.* 49, upon the death, incapacity, refusal, neglect, or absconding of any collector, two of the trustees, though not assembled at any meeting, may by writing under their hands appoint a proper person in his place, to continue until the next meeting of the trustees; and if the former collector, or his wife, widow, or any of his family or representatives, or any other person having the possession of any toll-house, buildings, or weighing machine, shall neglect or refuse to deliver up such possession for the space of three days after demand thereof, and notice in writing given for that purpose by any two trustees, or their clerk or treasurer, any justice may, by warrant under his hand and seal, order any constable or other peace officer, with such assistance as shall be necessary, to enter the premises and remove the person in possession.

By 3 Geo. 4, c. 126, s. 51, no toll collector, by reason of his residence in any toll-house, nor his apprentice or servant, can gain a settlement; and no tolls, nor any person in respect of them, nor any toll house, is to be rated to the poor, or any other public or parochial levy whatsoever.

Penalty for assaulting Officers.—By 3 Geo. 4, c. 126, s. 139, if any person shall resist or make forcible opposition against any person employed in the due execution of the act, or any local turnpike act, or shall assault any surveyor, or any collector of the tolls, in the execution of his office, he is liable to a penalty not exceeding 10*l*.

3. *Making, improving, and diverting turnpike roads.*

By 9 Geo. 4, c. 77, s. 8, so much of the 3 Geo. 4, c. 126, as authorizes the trustees to make, divert, shorten, vary, alter, and improve

any turnpike road, is repealed ; which repeal, it is presumed, was meant to extend only to the 83d section of the act ; though it may be very questionable whether this sweeping and general repeal does not affect other clauses in the 3 Geo. 4, c. 126, connected with the making, altering and improving of the roads.

Interference with private Lands.—By 9 Geo. 4, c. 77, s. 9, the trustees may make, divert, shorten, vary, alter, and improve the course or path of any road, through or over any private lands, making or tendering satisfaction to the owners and persons interested, or for any damage they may sustain thereby,—and also over any common or waste lands, without making any satisfaction,—in such manner as they shall think proper, so that any such road shall not exceed sixty feet in width, together with such footpaths, causeways, bridges, arches, banks, culverts, ditches, drains, and fences, on the line of such road, as they shall think necessary ; and for this purpose the trustees, and their surveyor and workmen, with or without carts or carriages, may enter upon such lands, and also upon any adjoining grounds, to stake out the same ; and if any person shall pull up, remove, or destroy any such stakes or other marks used for the purposes aforesaid, he is liable to a penalty not exceeding 5*l*.

But by 4 Geo. 4, c. 95, s. 65, the trustees cannot, for the above purpose, take or pull down any dwelling house or other building, or deviate over any inclosed lands more than one hundred yards from the line of the turnpike road, without the consent in writing of the owner, or take in or make use of any garden, yard, or paddock, or any park, planted walk, or avenue to a house, or any inclosed ground planted as an ornament or shelter to a house, or planted and set apart as a nursery for trees, without the like consent of the owner. And by *sect.* 66, in all cases where the trustees shall turn or alter any part of the road, or make any new road, or shall take away any fence, for widening or improving the road, they must make proper quickset hedges, or proper fences or walls on both sides of the new road, or on the side where any fence is removed, with sufficient ditches, posts and rails or other fence on both sides of such quickset hedge, to protect the growth thereof, so as effectually to guard the lands adjoining from trespass by cattle, and also proper gates, stiles, posts, bridges, and arches, where necessary, out of any such road into the land adjoining, and keep such fences in repair for five years.

The trustees, however, are not bound to repair the fences after they

are once made by them on a new road, unless there be a special provision in the act to that effect; but the owners of the adjoining lands must keep them in repair (*y*). But if they make a new road, they are bound to fence it on each side, in the first instance; and it is no excuse that they have not funds to complete the fencing (*z*).

Purchase and Sale of Lands.]—By 3 Geo. 4, c. 126, s. 84, the trustees may contract with the owners for the purchase of any lands or tenements which they shall deem necessary to purchase for widening, diverting, altering, and improving the road, and for the loss or damage such owners may otherwise sustain; and all bodies politic &c., and all persons whatsoever possessed of or interested in any such lands, or who shall sustain any damage as aforesaid, may contract with the trustees for the sale thereof, and by conveyance sell and convey unto the trustees all such lands, for the purpose aforesaid.

Ascertaining Value by a Jury.]—And by sect. 85, if the owners or persons interested, upon notice in writing left at their dwelling house, or at the house of the tenant in possession of the property, shall, for thirty days afterwards, neglect or refuse to treat, or shall not agree, or by reason of absence shall be prevented from treating, the trustees shall cause such damage, value, or recompense to be inquired into by a jury, and may summon before such jury, and examine upon oath all persons who shall be thought necessary to be examined, and may order a view of the property, and pay the sum assessed by the jury to the owners or persons interested; and the verdict of the jury is declared to be final. The trustees are empowered to issue warrants to the sheriff for summoning the jury to appear before them. All persons concerned may have their lawful challenges against the jurymen, but cannot challenge the array. The trustees may impose any reasonable fines upon the sheriff, his deputy, bailiffs and agents making default, and on any of the jury not appearing, or refusing to be sworn, or refusing to give a verdict, or in any other manner wilfully neglecting their duty, and on any persons required to give evidence, who shall not appear, or refuse to be sworn and examined, or to give evidence (*a*), so that no fine be more

(*y*) *Rex v. Llandillo Commissioners*, 2 T. R. 232.

(*z*) *Reg. v. Luton Trustees*, 1 Ad. & E. N. S. 860.

(*a*) The power given by the above section to the trustees to summon a jury be-

fore them, and to conduct the inquiry themselves, as to the value of the land required to be purchased by them, is somewhat contrary to the first principles of English law, which prohibit a party from being judge in his own cause.

than 10*l.* on any sheriff, deputy, bailiff, or agent, nor more than 5*l.* on any other person.

By *sect. 87*, in case the verdict of the jury is for more money than shall have been offered by the trustees, the costs of the inquiry are to be paid by their treasurer, after being ascertained by some justice not interested in the matter, who is empowered to make an order on the treasurer for the payment. But if the verdict is for no more or for less money than was offered, then the costs are to be paid by the party, and which, after being ascertained by the justice, may be deducted out of the money assessed; or if the costs shall exceed the sum assessed, and shall not be paid upon demand, it may be recovered by the trustees in the same way as any penalty. But where the party shall, by reason of absence, have been prevented from treating, then the costs are to be paid by the trustees.

Where a jury is thus summoned to assess the sum payable to several parties interested, they should by their inquisition apportion the value among the several parties, and not find merely the gross value of the premises; and the inquisition should also set out, that the several parties had been served with notice to treat for the purchase of their interests (*b*); which last allegation is essential to the validity of the inquisition (*c*). And where the jury award to a party more than the trustees offered for the purchase of his land, he is not only entitled to the costs of the sheriff and jury, but also to the costs of witnesses, attendance by attorney at the inquest, conferences, and briefs; but the expenses of surveyors, merely as such, cannot be included in the costs (*d*).

Disposal of Purchase-money belonging to persons under any Incapacity.—By 7 & 8 Geo. 4, c. 24, s. 9, where any compensation is awarded to the amount of 200*l.* for lands purchased or taken by the trustees, and the party entitled is a corporate body, or labouring under any incapacity, as infancy, or the like, the money is to be paid into the bank in the name of the Accountant-General of the Court of Exchequer, to be disposed of according to the directions of that Court. But by *sect. 10*, if the money be less than 200*l.* and more than 20*l.*, the party interested is to have the option of its being paid to two trustees; and by *sect. 11*, if less than 20*l.*, then it is to be paid to the party for the time being entitled to the rents and profits.

(*b*) *R. v. Norwich Road Trustees*, 5 Ad. & E. 563.

(*d*) *R. v. York Justices*, 1 Ad. & E. 828.

(*c*) *R. v. Bagshaw*, 7 T. R. 363.

Where a good title cannot be made, or the person entitled cannot be found, then the money is to be paid into the bank in the name of the Accountant-General of the Court of Exchequer, subject to the order and disposition of that Court. By *sect. 13*, persons in possession of the lands at the time of the purchase are presumptively entitled, until the contrary appears. And by *sect. 14*, where the money is required to be laid out in the purchase of other lands, the Court may order the expenses of such purchase to be paid by the trustees.

Sale of the old Road.—By 3 Geo. 4, c. 126, s. 86, upon payment of the money assessed, and thirty days' notice given to the parties, or their agents, or left at their usual places of abode, or with the tenant in possession of the property, the lands are declared to vest in the trustees. After the new road is completed, the old road may be stopped up and sold by the trustees, unless it leads over some moor, heath, common, uncultivated land, or waste ground, or to some church, mill, village, town, or place, or some lands or tenements, to which the new road doth not immediately lead, and which may therefore be deemed proper to be kept open, either as a public or a private way, for the use of any inhabitant at large, or any individual. All conveyances executed by the trustees, and inrolled in the office of the clerk of the peace, are declared to be good and effectual in law. But the trustees, instead of selling the old road, may, if they think fit, give it in exchange to the owners of land for the new road.

And by *sect. 88*, when any road shall be diverted or turned, and the new road shall be made and completed, the new road shall be subject to all the provisions to which the old road was subject, and shall be deemed a common highway, and be repaired and maintained as such; and the old road shall be stopped up and sold by the trustees to some person whose lands adjoin thereto. But if the old road shall lead to any lands, house, or place, which cannot in the opinion of the trustees be conveniently accommodated with a passage from the new road, the old road shall be sold, but subject to the right of way to such lands, according to the ancient usage in that respect.

Under the provisions of this last section, a new road made by the trustees under a local act will not cease to be a public highway, after the expiration of the term for which the local act was made (*e*).

Where lands are purchased by the trustees for the purpose of making a new road, or when the old road is given in exchange, it

seems that no conveyance is absolutely necessary to give the public a right to the new road, or the vendor a right to the old. A new road, therefore, made over the land of a person *sui juris*, and with his consent, may be effectually dedicated to the public in the place of the old road, without an actual conveyance (*f*). It has been held, that the exception in the 86th section, as to stopping up the old road, does not absolutely take away the power of the trustees to stop up the old road, but leaves them at their discretion to do so, or not; and therefore that they may stop up, and give up to the owner of the adjoining land, an old road leading to a church, to which the new road did not immediately lead (*g*).

Sale of Land not wanted.—By 3 Geo. 4, c. 126, s. 89, where the trustees shall be possessed of any ground not wanted for the purposes of the road, they may sell and dispose of it; but they must first offer it to the person of whom it was purchased, or to whose lands it adjoins. If he shall refuse, or shall not agree (except on account of the price) to purchase it, on an affidavit being made before a master, or master extraordinary, in chancery, or before some justice for the county, by some person no way interested in the price of ground, stating that such offer was made on behalf of the trustees and was not agreed to, such affidavit shall in all Courts whatsoever be sufficient evidence of the fact. If the person shall be desirous of purchasing the ground, and shall differ with the trustees as to the price, the price shall be ascertained by a jury in the manner before directed.

And by 4 Geo. 4, c. 95, s. 63, where the trustees become possessed of any tenements or hereditaments which are useless and unnecessary for the purposes of the road, they may sell and dispose of them in the same manner, as in the case of any ground not wanted for the purposes of the road.

By *sect.* 55, all sales and conveyances of any lands sold by the trustees, are to be made out at their expense, and are to be expressed in the form of conveyance therein set forth.

By 7 & 8 Geo. 4, c. 24, s. 7, the trustees are empowered to pay off any mortgage on lands purchased by them, for the use of the road.

(*f*) *Allnutt v. Pott*, 1 B. & Ad. 302. One of the reasons assigned by Lord Tenterden for his judgment in this case is, that the 84th section only mentions a conveyance in cases where the trustees have to

treat with persons incapacitated, or acting in trust for others. *Quære tamen*; see the section, *ante*, p. 1336.

(*g*) *De Beauvoir v. Welch*, 7 B. & C. 266.

By 9 Geo. 4, c. 77, s. 7, where any person shall subscribe for any money towards the making of any road, and shall afterwards neglect or refuse to pay the same, any one of the trustees, or their treasurer, or clerk, may sue for the amount.

4. *Of the Repair and Maintenance of the Roads.*

The trustees of a turnpike road are not liable to an indictment for not repairing it (*h*), nor will a mandamus be granted commanding them to repair (*i*). But a duty is imposed on them to expend the funds of the trust in keeping it in repair, and they are liable to a portion of a fine imposed upon the parish for neglect of such repair, under the 3 Geo. 4, c. 126, s. 110; for the parish is not exempt from the common law liability of repairing highways, though made into turnpike roads. The Court which imposes the fine has power to apportion it between the parish and the trust (*h*).

Fines for not repairing.]—The 110th section of 3 Geo. 4, c. 126, above referred to, declares, that when the inhabitants of any parish shall be indicted for not repairing any highway, being turnpike road, and the Court shall impose a fine for the repair, such fine shall be apportioned, together with the costs attending the same, between the parish and the trustees, in such manner as to the Court shall seem just; and the Court may order the treasurer of the turnpike road to pay the sum so proportioned for such road out of the money in his hands, if it shall appear to the Court, from the circumstances of the turnpike debts and revenues, that the same may be paid, without endangering the securities of the creditors who have advanced money upon the tolls.

Who liable to repair of New Road.]—By 4 Geo. 4, c. 95, s. 68, all persons liable to the repair of any old turnpike road, which may be widened, altered, diverted, or turned, are to continue liable to the repair of the new road, or so much as shall be equal to the burthen of repairing the old road, from which they are exonerated. If the parties interested cannot agree, the road is to be viewed by two justices, and the matter settled, adjusted, and determined by them in such manner as they shall think just and reasonable; and if it shall be found more convenient to fix a gross sum, or an annual sum to be

(*h*) *R. v. Netherthory*, 2 B. & Ald. 179.

(*k*) *R. v. Upper Papworth*, 2 East, 143.

(*i*) *Reg v. Oxford and Witney Trustees*,

12 Ad. & E. 427.

paid by the party, instead of fixing the part of such new road to be repaired, the justices may, with the consent of the party and of the trustees, order and direct the same accordingly; which order shall be final and conclusive.

The provisions of this section are not confined to bodies politic or corporate, and individuals, but apply also to parishes (*l*).

Persons liable, to continue so.—By 7 & 8 Geo. 4, c. 24, s. 17, where any part of any turnpike road, or any bridges, arches, drains, or sewers, have been accustomed to be repaired by any particular person, he is to continue liable for such repairs.

How Repairs to be enforced.—By the General Highway Act, 5 & 6 Will. 4, c. 50, s. 94, if any highway out of repair is a part of a turnpike road, and information on oath of one credible witness is given to a justice, he may summon the treasurer, or surveyor, or other officer of such turnpike road, to appear before the justices at a special sessions for the highways, and proceed thereon, as in the case of any highway out of repair (*m*), making the order on such treasurer, surveyor, or officer of the turnpike road. But the justices have no power to make any order, where the obligation of repairing the highway comes in question. The liability of persons to statute duty is abolished by that act; so that all the enactments in the General Turnpike Act relative to statute work are virtually repealed.

Materials for Repairs.—By 3 Geo. 4, c. 26, s. 97, the surveyor may search for, dig, get, gather, take, and carry away any materials for making or repairing the road, from any common, river, or brook, not being within fifty yards of any bridge, dam, weir, or jetty, or from any waste or common, without paying anything for such materials, filling up the pits or quarries, levelling the grounds, or sloping down the banks, or railing or fencing off such pits, so that the same shall not be dangerous to persons or cattle, and paying for the damage done by going over any inclosed lands. The surveyor may in like manner take materials in or out of the land of any person, in any parish in which any part of the road shall lie, or in any adjoining parish, (not being a garden, yard, park, paddock, planted walk or avenue to any house, or a nursery for trees,) making such satisfaction to the owners or occupiers, as the trustees shall judge reasonable, and may also land on and carry through any inclosed lands (not being a garden, &c.),

(*l*) *R. v. Barton*, 11 Ad. & E. 343.

(*m*) See *Highways*, ante, p. 445.

or over any open land, or common, any stone or other materials, paying such sum as the trustees shall think reasonable. And in case of any difference concerning such payments and damages, any two justices for the county, wherein the place from whence such materials shall have been taken shall be situate, on ten days notice thereof being given in writing by either party to the other, shall hear, settle and determine the matter of such payments and damages, and the costs attending the hearing and determining the same.

When taken from inclosed Land.—But by sect. 98, the surveyor cannot take materials from any inclosed land, until notice in writing, signed by him, shall have been given to the owner of the premises, or his or her known agent, or to the occupier of the premises, or left at the house or last or usual place of abode of such owner or occupier, to appear before two justices acting in and for the county, where the lands from whence such materials are intended to be taken shall lie, to show cause why such materials shall not be had therefrom. In case the party shall attend, but shall not show sufficient cause to the contrary, the justices may authorize the surveyor to take and carry away such materials at such times as they shall think proper; and if the party shall neglect to appear by himself or his agent, the justices may (upon proof on oath of the service of such notice), make such order therein as they shall think fit, as fully and effectually to all intents and purposes, as if such owner or occupier, or his or her agent, had attended.

All lands in the exclusive occupation of any person for agricultural purposes are to be deemed inclosed lands, although not separated from any adjoining lands, or from the highway, by any fence or other inclosure.

Mode of valuing Materials.—By the 7 & 8 Geo. 4, c. 24, s. 15, the trustees are not to be required to pay any larger sum as a satisfaction for any materials, than such sum as shall appear to two justices that such materials could have been actually sold for; and if they shall be of opinion that the materials, before they had been raised, taken, or carried away, could not have been sold, then they shall only assess the damage done to the land of the owner, by raising, gathering, or carrying away the same.

Fencing off and securing Pits.—By 3 Geo. 4, c. 126, s. 99, if any surveyor shall, by reason of searching for, or getting any materials for repairing any highways, make any pit or hole, in any common or other lands, rivers, or brooks, he shall forthwith cause the same to be sufficiently fenced off during such time as the pit shall continue open;

and shall within three days after the pit shall be opened, where no materials shall be found, cause the same forthwith to be filled up, levelled, and covered with the turf or clod which was dug out of the same; and where any such materials shall be found, within fourteen days after having dug up sufficient materials, if the same is not likely to be further useful, he shall cause the same to be filled up, sloped down, or fenced off, and so continued; and if the same is likely to be further useful, he shall secure the same by posts and rails, or other fences, to prevent accidents to persons or cattle; under the penalty of 20s. for every default; and in case he shall neglect to fence off such pit, or to slope down the same, for the space of six days after he shall have received notice for either of those purposes from any justice, or from the owner or occupier of such ground, river, or brook, or any person having right of common within such common or waste lands, and such neglect and notice shall be proved upon oath before one justice, he is liable then to a penalty not exceeding 10*l.*, nor less than 40*s.*, to be determined and adjudged by such justice, and to be laid out and applied in the fencing off, filling up, or sloping down such pit, in such manner as the justice shall direct and appoint, and to be levied in the same manner as other penalties.

Power to purchase Lands for Materials..]—By *sect.* 100, the trustees may contract with any person for the purchase or demise of any land, for the purpose of digging materials therefrom, and may afterwards sell the land; but the entering into such contract shall not be compulsory upon any person.

Penalty for taking away Materials..]—By *sect.* 101, if any person shall take away any materials which shall have been gotten, dug, or gathered for the repair or use of any turnpike road, or any materials out of any quarry which shall have been opened for the purpose of getting such materials, before the surveyor and the workmen employed for getting such materials shall have discontinued working therein for the space of six weeks, (except the owner or occupier of any private grounds, and persons authorized by him to get materials in such quarry, for his own private use, and not for sale), he incurs a penalty not exceeding 5*l.*

Repositories for Materials..]—By *sect.* 102, the trustees may purchase or rent any pieces of ground not exceeding in any one place six yards square, on the side of the road, as repositories for materials for making or repairing the same; and in case any difference shall arise between them and the owner of such ground, with respect to the

value, or the necessity or propriety of taking it, the same shall be settled and determined by any two justices for the county where the ground shall be situate, in manner before directed with respect to getting materials for the repair of the road.

Ground for Repository of Materials.—By 4 Geo. 4, c. 95, s. 56, the trustees may purchase or rent, with the consent of the owner, any piece of ground within ten miles of the Royal Exchange, as a repository for materials, so as the same shall not exceed in the whole half an acre.

Power of Distress for amount of Compensation.—By 4 Geo. 4, c. 95, s. 71, when any sum shall be ordered to be paid by any justice as a compensation for any materials, or for any damage, and the same shall not be paid by the trustees within ten days after demand in writing shall have been made from the clerk to the trustees, or their treasurer, in which demand the order of the justice shall be stated, the amount of such compensation may be levied by distress on the goods vested in the trustees by virtue of any turnpike act, or the goods of their treasurer, under a warrant of a justice under his hand and seal; and the treasurer may retain, out of any monies in his hands, all such damages and costs as he shall have sustained by virtue of such warrant.

Footpaths and temporary Roads.—By 3 Geo. 4, c. 126, s. 111, the trustees may make and keep in repair any causeways for the use of foot passengers on the sides of the turnpike road, in such manner as they shall think proper; and also make a road through the grounds adjoining to any ruinous or narrow part of any turnpike road, (not being the site or ground of any house, nor a yard, garden, park, paddock, planted walk, or avenue to any house, or any inclosed ground, planted and set apart as a nursery for trees,) to be made use of by all passengers, cattle, and carriages as a public highway, whilst the old road is repairing or widening, and till such time as it shall be convenient for passengers and cattle to pass along the same, making such recompense to the owners and occupiers of such private grounds respectively for the damages they may thereby sustain, as shall be adjudged reasonable by the trustees; and in case of any difference concerning such damages, any two justices for the county wherein such grounds shall be situate, on fourteen days' notice in writing being given by either party to the other, may settle, adjudge, and finally determine what recompense shall be made to such owners and occupiers.

Milestones and Direction Posts, &c.—By sect. 119, the trustees are to cause stones or posts to be set up or placed in or near the sides of every turnpike road at the distance of one mile from each other, denoting the distance from any town or place, and also such direction posts at the several roads leading out of any such road, or at any crossings, turnings or terminations thereof, with inscriptions thereon, denoting to what place the said roads respectively lead; and also to cause to be painted, in legible characters on some wall or board at the entrance of every town or village, the name of such town or village; and also to cause stones to be put up, marking the boundaries of parishes, where such boundaries shall cross any turnpike road; and to repair or renew such stones, posts and boards, and to keep and continue legible the inscriptions thereon. If any person shall wilfully break, cut down, pull up, or damage any such posts, stones or boards, or shall obliterate, deface, spoil or destroy all or any of the letters, figures, or marks which shall be inscribed or painted thereon, or on any such walls, and be thereof convicted before any justice for the county where such offence shall be committed, by the oath of one credible witness, he is liable to a penalty not exceeding 10*l*.

Contracting for repairs.—By 4 Geo. 4, c. 95, s. 78, the trustees, or their clerk, surveyor, or any other officer by their order, may contract by the year, or otherwise, with any person for the making, amending, altering or maintaining the road, or any bridges, toll-houses or buildings thereon, or for any other thing which such trustees are authorized or empowered to make, build, do, execute, or perform; and all contracts in writing entered into by the trustees, or pursuant to any order of the trustees by their clerk, surveyor, or other officer, with any workmen or other persons relating to any such matter or thing, shall be binding on the trustees, and upon all other parties who shall sign the same; and such sum of money, as shall be requisite for the due performance of such contract, shall be the measure of the damages to be recovered in any action or suit against any party making default in fulfilling such contract.

Contracting with persons liable to repair.—By 3 Geo. 4, c. 126, s. 106, the trustees may also contract with any person liable to the repair of any part of the road, or any bridges thereon, by tenure or otherwise, for the repair thereof, for such term as they shall think fit, not exceeding three years, and may contribute towards the repair of such road or bridges such sum as they shall think proper out of the tolls.

Composition for repair of bridges.—By sect. 107, any county or parish may enter into a composition or agreement with each other, and by the authority of those persons who shall be legally competent to make rates for such county and parish respectively, whereby the improvement and future repair of any bridge liable to be repaired by the parish shall be undertaken and lie upon the county in which such bridge is locally situated; and all rates made for carrying into effect any such composition shall be made and assessed in the same manner as other rates of such county or parish respectively, and shall be good and valid in law.

By sect. 108, the trustees and such parish may also in like manner enter into a composition with each other, and by the authority of the persons legally competent to make rates for such parish, whereby, in consideration of a yearly sum agreed to be paid to the treasurer of the trustees out of the rates to be raised for the repair of any parish bridge, the repairs of such bridge shall, during the continuance of any local act under which such trustees shall be appointed, be undertaken and carried on by the trustees; and all rates and assessments raised and levied for carrying such composition into effect shall in like manner be good and valid.

When trust fund deficient for expenses of repairs.—By 4 & 5 Vict. c. 59, s. 10 (n), the justices at any special sessions for the highways, upon information exhibited before them by the clerk or treasurer of any turnpike trust, that the funds of the trust are insufficient for the repairs of the turnpike roads within any parish, notice in writing of such intended information having been previously given on the part of the clerk or treasurer to the parish surveyor, twenty-one days at least before such special sessions, may examine the state of the revenue and debts of such turnpike trusts, and inquire into the state and condition of the repairs of the roads within the same, and also ascertain the length of the roads, including turnpike roads, within such parish, and how much of such road is turnpike road; and, if it shall appear to the justices necessary or expedient for the purposes of any turnpike road, they may adjudge and order what portion, if any, of the highway rate levied under the 5 & 6 W. 4, c. 50, shall be paid by the parish surveyor, and at what time, to the treasurer of the turnpike trust; such money to be wholly laid out in the actual repairs of such part of the turnpike road, as lies within the parish from which it was received.

(n) The above act was to continue to the end of the session of parliament of 1843; but by 6 & 7 Vict. c. —, it is in-

tended to be continued to the 1st January 1865.

By *sect. 2*, if any parish surveyor shall refuse or neglect to pay over such portion of the highway rate, pursuant to such order, it may be levied on his goods by distress.

By *sect. 3*, an appeal is given to the next quarter sessions, on the appellant giving to the justices ten days' notice in writing of the grounds of such appeal, within six days after the order; but if there is not time sufficient to give such notice before the next sessions, the appeal may be to the next following sessions.

5. *Of the Tolls.*

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| 1. <i>General regulations as to tolls.</i> | 5. <i>Toll-houses and toll-gates.</i> |
| 2. <i>Tolls for narrow wheels.</i> | 6. <i>Letting the tolls to farm.</i> |
| 3. <i>Tolls for over weight.</i> | 7. <i>Mortgaging the tolls.</i> |
| 4. <i>Exemption from tolls.</i> | |

1. *General regulations as to Tolls.*

What payable.—The local act under which the road is made always specifies the amount of toll that is to be taken; but there are some provisions in the general acts, which are applicable to all turnpike roads.

Carriages affixed to others.—By 3 Geo. 4, c. 136, s. 31, where by any local act no toll is directed to be taken for any coach or other carriage with four wheels passing through any turnpike gate, affixed, tied, or secured to any waggon or cart, the same toll, and no more, may be taken for it, as if it had passed through drawn by two horses; and where by any such act no toll is directed to be taken for any chair, cart, or other carriage with two wheels only, so affixed, tied, or secured, the same toll may be taken for it, as if it had passed through drawn by one horse only. And where any horse shall be fastened to, but not used in drawing, a waggon or other carriage, such horse shall not be liable to a higher toll than a single horse. But if any coach or other carriage so affixed, tied, or secured, shall have any goods conveyed therein, other than the harness thereunto belonging, and such articles of package as may be necessary for the protection of such carriage, it shall then be liable to double toll.

Where drawn by oxen.—By *sect. 38*, in all carriages wherein oxen or neat cattle shall be used, two oxen or neat cattle shall be considered as one horse, with respect to toll.

Post Horses.—By *sect. 29*, all horses travelling for hire under the post-horse duty act, having passed through any turnpike gate, drawing any carriage for which any toll shall have been paid, on returning through the gate, and the other gates (if any) cleared by

such payment, either without the carriage, or with the carriage empty and without a ticket denoting a fresh hiring, may reposs toll free,—although such horses or carriage shall not have passed through the gate on the same day,—provided the horses shall return before nine o'clock of the next morning.

It seems that a hiring of horses to go to a particular place and back, is a *hiring to travel*; but that a hiring to go so many miles into the country, no place being fixed,—or a hiring to take an airing,—or to go a certain distance into the country, and return in the evening,—are not any of them a hiring to *travel* (o).

Horses returning with a carriage.—By sect. 30, where any horses shall pass through a turnpike gate not drawing any carriage, and a toll shall be paid for them, and the same horses shall return drawing any carriage on the same day, or within eight hours after their first passing, the toll previously paid shall be deducted from the toll payable when drawing the carriage, so that no higher toll shall be taken than if the horses had in the first place passed through the gate drawing the carriage.

Back tolls.—It is provided by every local act, that a person who has once paid toll shall not be liable to a second on the same day; but the right to claim the exemption depends entirely upon the words of the local act; in some acts the toll being imposed upon the *horses*, in others upon the *carriages*, and in other acts upon both *horses and carriages*. Where the local act provided, that the same person should be permitted to reposs free with the same horses or carriage, it was held, that, the toll having been paid by a coachman for horses drawing a stage coach, a second toll could not be demanded for the same horses repossing, though with a different coach and a different coachman belonging to the same proprietor (p). And where a local act imposed a toll on every carriage and on every horse, and exempted any person from paying more than once in a day for passing or repossing with the same carriage or horse, this was held to exempt the traveller from paying a second time in the day for the passage of the same carriage, though drawn by different horses, and conveying different passengers (q). And even where a clause in a turnpike act provided, that, in all cases of carriages travelling for hire, the traveller

(o) *Ramsden v. Gibbs*, 1 B. & C. 319.

(p) *Norris v. Poate*, 3 Bing. 41;

Fearnly v. Morley, 5 B. & C. 25; *Jackson v. Curwen*, 5 B. & C. 31; *Chambers v. Williams*, 5 B. & C. 36; *Niblett v. Pottow*,

1 Bing. N. R. 81; *Gray v. Shilling*, 2 B. & B. 30.

(q) *Williams v. Sangar*, 10 East, 66; *Waterhouse v. Keen*, 4 B. & C. 200.

or passenger therein should be considered as the person paying the toll, and that such payment should not exempt such carriages repassing with a different traveller or passenger, it was adjudged not to extend to stage coaches,—such description of carriage not being hired by the respective passengers, but simply the vehicle of their conveyance,—and therefore that such stage coaches were free of toll, where the toll was imposed on the carriage, by one payment in the day, although returning with different horses and different passengers, the horses being the same in number (*r*). But in one case where the act imposed the toll, not upon the carriage, but upon the horses; and the exemption was, that no person should pay toll more than once in any one day, for passing and repassing with the *same horses and carriages*; it was held, that a second toll was payable for repassing with the same horses and a *different coach*, though belonging to the same proprietor, and driven by the same coachman (*s*).

Where by a local act, every stage coach, stage waggon, or other stage carriage, was made liable to toll every time of passing or repassing, but all other carriages were exempt from back toll; it was held, that a waggon employed by a wharfinger in carrying out goods, brought by a canal company to his wharf, for persons in the neighbourhood, and in bringing goods from the neighbourhood to his wharf for transit by the canal, for which conveyance he made charges on each parcel of goods, was not a *stage* waggon or carriage, within the terms of the act, and was therefore not liable to any back toll. A stage carriage, it seems, is one which travels to and from some determinate place at certain stated intervals of time (*t*).

Power to reduce tolls.] By 3 Geo. 4, c. 126, s. 43, the trustees may at any meeting (of which one calendar month's notice in writing shall be given, to be affixed on all the turnpike gates, and published in some public newspapers circulated in that part of the country,) may reduce any of the tolls for such time as they shall think fit, and again advance them in like manner, not exceeding the rate granted by the local act. But where the whole money borrowed on the credit of the tolls shall not have been paid, then the tolls cannot be reduced without the consent of the persons entitled to five sixths of the money remaining due. And by *sect. 44*, where the trustees shall so reduce or advance the tolls, they shall first reduce those payable on waggons, carts, or other such carriages, having the fellyes of the wheels of the

(*r*) *Williams v. Sangar*, 10 East, 66.

(*s*) *Learing v. Stone*, 2 B. & C. 515.

(*t*) *Reg. v. Ruscoe*, 8 Ad. & E. 386,

breadth of six inches, and then take double, or other proportions, as the case may be, of such reduced or advanced tolls on other such carriages having the fellies of a greater or less breadth than six inches.

Where by a local turnpike act the trustees were authorized to take at each and every of the gates certain tolls, and were also empowered to reduce and again to advance all or any of the tolls thereby granted; it was held, that the trustees could only reduce or advance the tolls at all the gates, but that they could not reduce or advance them at one gate, and not at the other (*u*).

For watering roads.]—By *sect. 120*, wherever any local act enables the trustees of any turnpike road to water the same, and to take an additional toll for such watering during a limited time specified in the act, the trustees, at any general meeting held for that purpose, may order that such part of the road as by the local act is directed to be watered, and a certain additional toll to be taken for such watering, shall be watered, and such additional toll taken, for any time between the first March in every year and the first of November following; and the trustees may exercise and enforce all the powers, remedies and penalties for collecting the said additional tolls, as they by law have for any other tolls.

Double Tolls.]—By 2 & 3 Will. 4, c. 124, s. 1, where by virtue of any local act double toll is imposed on any waggon, cart, or other carriage, or any horses drawing the same, which at the time of first passing through any toll-gate shall have been liable to and shall have paid single toll only, and shall, on repassing through the same gate on the same day before twelve o'clock at night, be so laden as to be subject to double toll, it is liable to pay one other single toll only, and no more, making together with the toll first paid, two single tolls in the whole. And by *sect. 2*, any waggon, on which a penalty for overweight has been levied, shall, on receipt of a ticket to that effect, be exempted from any further penalty for overweight on that day, and on the same trust, provided there be no alteration of the loading of the waggon.

Composition for Tolls.]—By 4 Geo. 4, c. 95, s. 13, the trustees may compound, for any term not exceeding one year at a time, with any person for the tolls payable at any of the turnpikes.

Power to collect Tolls.]—By 9 Geo. 4, c. 77, s. 16, the trustees,

or any person appointed collector of the tolls to be taken by virtue of any local turnpike act, may demand and take every day (such day, for the purposes of all local turnpike acts, being computed from twelve o'clock at night to twelve o'clock of the next succeeding night) the several and respective tolls mentioned in any such act, at the several and respective toll-gates and turnpikes, or side bars and chains, continued and erected by virtue of that or any local turnpike act; which tolls shall be demanded and taken, before any horses, cattle, or carriage whatsoever, shall be permitted to pass through any turnpike or toll-gate, or side bar or chain; and the tolls to be levied under any local turnpike act are declared to be vested in the trustees of such act, for the purposes thereof.

Power to distrain.—By 3 Geo. 4, c. 126, s. 39, if any person liable to toll shall, after demand made, neglect or refuse to pay the same, the person authorized to collect it may seize and distrain any horse, cattle, carriage, or other thing, in respect of which the toll is imposed, together with the harness (except the bridle or reins of any horse separate from the horse), or any carriage, in respect of the horses drawing the carriage on which the toll is imposed, or any of the goods of the person so neglecting or refusing to pay; and if the toll and the charges of such distress shall not be paid within four days, the distress may be sold.

Passing through without paying Toll.—And by sect. 139, if any person shall pass through any turnpike gate, rail, chain, or other fence set up by authority of parliament, without paying the toll appointed to be paid at such gate or other fence, or shall make any rescue of cattle or other goods distrained by virtue of the act; he is liable to a penalty not exceeding 10*l.*

Power of Justices to settle Disputes.—By sect. 40, if any dispute shall happen about the amount of the tolls due, or the charges of any distress of any tolls, the person distraining may retain such distress, or the money arising from the sale thereof, until the amount of the tolls and the charges of the distress be ascertained by some justice for the county, division, or place wherein the turnpike at which the toll in dispute shall be payable may be situate; who, upon application made to him for that purpose, shall examine the matter on the oath of the parties, or other witnesses, and determine the amount of the tolls due, and shall award such costs to either party as to him shall appear right; all which costs may be levied by distress, by warrant under the hand and seal of the justice.

Penalty for evading Toll.—By *sect. 41*, if any person shall, with any horse, cattle, beast, or carriage, go off or pass from any turnpike road over any land near or adjoining thereto (not being a public highway, and such person not being the owner or occupier, or servant, or one of the family of the owner or occupier of such land), with intent to evade the payment of the toll; or if any owner or occupier of any such land shall knowingly or willingly permit any such person, with any horse, &c. to pass over such land, with such intent; or if any person shall give or receive from any person other than the collectors of the tolls, or forge, counterfeit, or alter, any ticket directed to be given, with intent to evade the payment of the tolls, or any part thereof; or if any person shall fraudulently or forcibly pass through any such toll-gate with any horse, &c.; or shall leave upon the road any horse, &c. whatsoever, by reason whereof the payment of any toll shall be avoided or lessened; or shall take off any horse from any carriage, either before or after having passed through any toll-gate, or, having passed through any toll-gate, shall afterwards add or put any horse or other beast to any such carriage, and draw therewith upon any part of any turnpike road, so as to increase the number of horses or other beasts drawing the said carriage, after the same shall have passed through any toll-gate, whereby the payment of any of the tolls shall or may be avoided; or if any person shall do any other act whatever, with intent to evade the payment of any of the tolls, and whereby the same shall be evaded; every such person shall forfeit not exceeding 5*l*.

2. *Tolls for Narrow Wheels.*

Additional Tolls for Wheels under a certain width.—By 3 Geo. 4, c. 126, s. 7, the trustees may demand for every waggon, cart, or other such carriage, having the fellies of the wheels thereof of less breadth than four and a half inches at the bottom or soles thereof, or for the horses or cattle drawing the same, one half more than the tolls payable for any carriage of the same description having the wheels thereof of the breadth of six inches; and for every such carriage having the fellies of the wheels of the breadth of four and a half inches and less than six inches at the bottom or soles thereof, or for the horses or other cattle drawing the same, one fourth more than the tolls payable on any carriage of the like description having the wheels of the breadth of six inches.

Abatement of Toll for Wheels particularly constructed.—By

sect. 9, where any waggon or cart shall have the sole or bottom of the wheels thereof rolling on a flat surface, and the nails of the tire of such wheels countersunk and cylindrical (that is to say), of the same diameter on the inside next the carriage as on the outside, so that when such wheels shall be rolling on a flat or level surface, the whole breadth thereof shall bear equally on such surface, and shall have the opposite ends of the axletrees of such carriage, so far as the same shall be inserted into the respective naves of the wheels thereof, horizontal, and in the continuance of one straight line, without forming any angle with each other, and in each pair of wheels the lower parts when resting on the ground shall be at the same distance from each other, as the upper parts of such wheels; the trustees may order that every such carriage shall pay only not less than two thirds of the full toll.

Collectors may measure Wheels.—By *sect. 11*, any trustee, and every collector, or his deputy, or other person acting by or under the authority of the trustees, or of their lessee, may measure the breadth and construction of the wheels of every waggon, cart, or other such carriage, passing on the turnpike road, previously to its passing through any toll-gate or bar at which toll shall be payable; and if any owner or driver shall turn or drive out of the road, in order to avoid or evade such measuring; or shall refuse to allow the wheels to be so measured, and the construction thereof examined; or shall attempt to pass through any toll-gate or bar, before such measurement and examination shall be made (the same having been required); or shall in any way hinder or obstruct any authorized person in making such measurement and examination; he is liable to a penalty not exceeding 5*l.*; and it shall not be lawful for any such carriage, not permitted to be measured or examined, to pass along any turnpike road; and if any other person appointed to collect the tolls shall allow the same to pass, before such measurement and examination shall be made (the same having been required), he is liable to a penalty not exceeding 5*l.*

Where additional Tolls not provided for by Local Acts.—By 4 Geo. 4, c. 95, s. 5, where the trustees shall not have taken the additional tolls on waggons, carts, or carriages, having the wheels thereof of less breadth or gauge than six inches from side to side at the bottom or sole thereof, under the 13 Geo. 3, c. 84, and the local act shall not have provided a scale of tolls applicable to the road, the trustees shall continue to take for every waggon, cart, or other

such carriage, having the fellies of the wheels thereof of less breadth or gauge than four and a half inches from side to side at the bottom or sole thereof, the same tolls as are by such local act payable in respect of such carriages; and for every waggon, or other such carriage, having the fellies of the wheels thereof of the breadth or gauge of four and a half inches, and less than six inches, at the bottom or sole thereof, one sixth less than the tolls payable for the same; and for every such carriage, having the fellies of the wheels thereof of the breadth of six inches or upwards, one third less than the tolls payable for the same.

Where the scale of Tolls imposed by the Local Act to continue.]—By sect. 6, where any local act shall direct a higher or lower rate of toll on any waggon, cart, or other such carriage, in respect of the greater or lesser breadth of the wheels, and where the additional tolls in respect of the breadth of wheels imposed by the 13 Geo. 3, c. 84 (v), shall not have been collected, the trustees may continue to collect the tolls directed to be taken by the local act, and shall not impose the additional tolls under the 13 Geo. 3.

Where a local act, passed after the general turnpike act, imposes a particular scale of tolls for waggons with wheels of an improper breadth, only those tolls can be demanded; and the section in the previous general act, imposing a different scale, is virtually repealed (x).

Exemptions.]—By 4 Geo. 4, c. 95, s. 19, nothing relating to the breadth of wheels of carriages, or to the tolls payable in respect of the wheels, shall extend to any chaise marine, coach, landau, berlin, barouche, phaeton, sociable, chariot, calash, hearse, break, chaise, curricule, gig, chair, or taxed cart, or any cart not drawn by more than one horse, or two oxen.

3. *Tolls for Overweight.*

What Weights to be allowed to Carriages.]—By 3 Geo. 4, c. 126, s. 12, the following weights are allowed to waggons, carts, and other carriages, (that is to say), to every waggon or other four-wheeled carriage having the fellies of the wheels of the breadth of nine inches at the bottom or sides thereof, together with the loading of such carriage, six ton ten hundred weight in summer, and six ton

(v) The former general turnpike act.

(x) *Ridge v. Garlick*, 8 Taunt. 424.

in winter ; to every cart or other such two-wheeled carriage, having the fellies of the wheels of the like breadth, together with the loading of such carriage, three ton ten hundred weight in summer, and three ton in winter ; to every waggon or other such four-wheeled carriage having the fellies of the wheels of the breadth of six inches, and less than nine inches, at the bottom or sole, together with the loading, four ton fifteen hundred weight in summer, and four ton five hundred weight in winter ; to every cart or other such two-wheeled carriage having the fellies of the wheels of the breadth last-mentioned, together with the loading, three ton in summer, and two ton fifteen hundred weight in winter ; to every waggon or other such four-wheeled carriage having the fellies of the wheels of the breadth of four inches and a half, and less than six inches, together with the loading, four ton five hundred weight in summer, and three ton fifteen hundred weight in winter ; to every cart or other such two-wheeled carriage having the fellies of the wheels of the breadth last-mentioned, together with the loading, two ton twelve hundred weight in summer, and two ton seven hundred weight in winter ; to every waggon or other such four-wheeled carriage having the fellies of the wheels of a less breadth than four and a half inches, together with the loading, three ton fifteen hundred weight in summer, and three ton five hundred weight in winter ; to every cart or other such two-wheeled carriage having the fellies of the wheels of the breadth last-mentioned, together with the loading, one ton fifteen hundred weight in summer, and one ton ten hundred weight in winter. And, for the several purposes of the act, it shall be deemed summer from the 1st May to the 31st October, both days inclusive, and winter from the 1st November to the 30th April, both days inclusive.

By *sect. 13*, to every caravan or other four-wheeled carriage, used for the conveyance of goods, and *constructed with springs*, shall be allowed three ton fifteen hundred weight in winter, and four ton five hundred weight in summer. But, by 4 & 5 Will. 4, c. 81, the provision contained in this last section is not to extend to waggons or other four-wheeled carriages having the fellies of the wheels of the breadth of not less than four and a half inches at the bottom or sole thereof.

By 3 Geo. 4, c. 126, s. 14, to every dray with two wheels of not less than four and a half inches in breadth, and drawn by not more than three horses, and used in London, or within the bills of mortality, there shall be allowed at all times of the year, together with the loading, the full weight of two ton sixteen hundred weight.

Additional Tolls for Overweight.]—By *sect. 15*, the trustees are required to take the following additional toll for overweight, that is to say, for the first and second hundred of such overweight, the sum of 3*d.* for each hundred; for every hundred of such overweight above two hundred, and not exceeding five hundred, the sum of 6*d.*; for every hundred of such overweight above five hundred, and not exceeding one thousand, the sum of 2*s.* 6*d.*; and for every hundred of such overweight exceeding one thousand, the sum of 5*s.*; which said additional tolls may be levied and recovered in the same manner as any other toll.

Exemptions.]—By *sect. 16*, the regulations of weight, however, are not to extend to any waggons, carts, or other carriages, carrying only manure or lime for the improvement of land, or any hay, straw, fodder, or corn unthrashed, except hay, straw, fodder, or corn carried for sale; nor to any waggons, carts, or other carriages, carrying only one tree, or one log of timber, or one block of stone, or one cable or rope; or (by 4 Geo. 4, c. 95, s. 21,) one block, plate, or vessel of iron, or other metal, or compounded of any two or more metals united in one piece; nor shall the said regulations of weight extend to any chaise marine, coach, berlin, barouche, sociable, chariot, calash, hearse, break, gig, chaise, or taxed cart; or (by 4 Geo. 4, c. 95, s. 19,) to any cart not drawn by more than one horse, or two oxen.—A cart, having carried a basket of vegetables and two bottles of milk to London, and returning with a load of manure and the empty bottles and basket, was held to be within the exemption contained in this section (*y*).

By 3 Geo. 4, c. 126, s. 35, the regulations as to overweight also are not to extend to carriages provided for the service of his Majesty's forces, or conveying any public stores, or for the use of the King's forces; nor shall any such carriage be stopped by reason of its being drawn by any number of horses or oxen; but the owner or driver may put any number to it.

Penalty for evading Tolls for Overweight.]—By *sect. 20*, if any person shall unload any goods from any waggon, or other carriage, before the same shall come to any turnpike gate, or weighing machine, or shall load or lay upon such carriage, after the same shall have passed any such turnpike or weighing engine, any goods taken or unladen from any horse, cart, or other carriage belonging to or

(y) *Chambers v. Elans*, 2 Campb. 393.

hired or borrowed by the same waggoner or carrier, in order to avoid the payment of the respective duties payable for overweight; or if any person shall so unload, in order to carry considerable quantities of goods through any turnpike gate, or by any weighing engine, in one and the same day, and thereby pay less toll at such turnpike gate or weighing engine than would have been paid if such goods had not been so unladen; or if any driver of any waggon or cart shall not wait a reasonable time whilst any other carriage shall be weighed, which shall have come to the weighing engine before the carriage of which he shall be the driver; or if the driver of any waggon or cart shall refuse or delay to remove or drive any such waggon or cart from the weighing machine, in order by such neglect or refusal to impede or delay the weighing of any other waggon or cart; or shall turn or drive out of any road, in order to avoid or evade the weighing of any waggon or cart; the offender is liable to a penalty of 5*l.*, on conviction by one justice, upon the oath of one credible witness, to be levied upon the goods of the owner of the waggon, or other carriage; and every driver, not being the owner, incurs a penalty not exceeding 40*s.*, and in case of nonpayment, is to be committed to the house of correction not exceeding two calendar months.

Weighing Machines, and enforcing Tolls for Overweight.—By *sect. 21*, the trustees may order and cause to be built and erected at any of the turnpikes, or at such distance therefrom as they shall think expedient, one or more crane or cranes, machines, or engines, with a suitable house or other building thereto, proper for the weighing of waggons or carriages conveying goods or merchandize; and by notice on a board for that purpose to be put up at every such weighing machine, may order and direct all such waggons or carriages which shall come within 100 yards of any crane, machine, or engine, to be weighed, together with the loading thereof.

By *sect. 25*, where two or more turnpike roads meet at or near the same place, the trustees of the respective roads, at a meeting to be held for that purpose, may fix upon some convenient place on which to erect a weighing engine, which will accommodate all such turnpike roads, and may, by agreement amongst themselves, proportion the expenses of erecting and maintaining such weighing engine, and likewise the money arising from forfeitures for overweight.

By *sect. 22*, the keeper of every toll-gate or bar where any weighing engine shall be erected, or any other person appointed by the

trustees, or by their lessee, to the care of such weighing engine, is required to weigh all such waggons, carts, and other carriages liable to be weighed, which shall pass loaded through such gates or bars respectively, and which he shall believe to carry greater weights than are allowed to pass without paying the additional toll. And if any collector, or person so appointed, shall permit any such waggon or other carriage to pass by or through any such toll-gate, with greater weights than are hereby allowed, without weighing the same and receiving the additional tolls, he shall for every such offence forfeit the sum of 5*l.*; and if the owner or driver shall refuse to allow the waggon to be weighed, or shall resist any gate keeper or toll collector in weighing the same, he is liable to a penalty not exceeding 5*l.*

By *sect. 24*, the surveyors of every turnpike road are required to make convenient places for turning such carriages where any weighing engine shall be erected, within 300 yards of the toll-gate, on each side thereof, if the ground will admit of the same; and if the driver of any such carriage, being requested to return with his carriage to such weighing engine, shall neglect or refuse so to do, he shall forfeit not exceeding 5*l.*; and any peace officer, or other person being then present, may drive and take such carriage back to such weighing engine, in order to be weighed.

Power to reduce the Scale of Tolls for overweight.]—By 4 Geo. 4, c. 95, s. 20, the trustees of the roads, within ten miles of the cities of London and Westminster and borough of Southwark, may, at any meeting, of which fourteen days' notice shall be given, lower the additional tolls for overweight directed to be taken by the 3 Geo. 4, c. 126.

And by 2 & 3 Vict. c. 46, the trustees of any turnpike road may, at any meeting to be held for the purpose (of which meeting and the purpose thereof fourteen days' notice is given), lower the additional tolls directed by the above acts to be taken for overweight, and may take such reduced tolls as shall be fixed and agreed on at such meeting.

4. *Exemption from Tolls.*

By 3 Geo. 4, c. 126, s. 32, no toll can be taken for any horses or carriages attending the sovereign or any of the royal family, or (by 4 Geo. 4, c. 95, s. 24) going to attend, or returning from having at-

tended them; or for any horse or other cattle, or for any waggon, cart, or other carriage (*z*), employed in carrying, or going empty to fetch and carry, or returning empty from carrying,—having been employed only in carrying, on the same day,—any stones, bricks, timber, wood, gravel, or other materials for making or repairing any turnpike road or public highway, or for building, rebuilding, or repairing any bridge thereon; or from the surveyor of any turnpike road, when engaged in executing or proceeding to execute, within the limits of his own or any adjoining trust, the powers of any act relating to any turnpike road; or for any horse, beast, or other cattle, or carriage, employed in carrying,—having been employed only in carrying, on the same day,—any dung, soil, compost, or manure (except lime) for improving lands, or any ploughs, harrows, or implements of husbandry (unless laden also with some other things not exempted from toll), or any hay, straw, fodder for cattle, and corn in the straw (which has grown or arisen on land in the occupation of the owner of any such hay, &c.), potatoes, or other agricultural produce, and which has not been bought, sold, or disposed of, nor is going to be sold or disposed of; or for any other horses or other beasts employed in husbandry going to or returning from plough or harrow, or to or from pasture or watering place, or going to be or returning from being shod or farried (*a*), but not going or returning on those occasions more than two miles on the turnpike road on which the exemption shall be claimed; or of or from any person going to or returning from his proper parochial church or chapel, or of or from any other person going to or returning from his usual place of religious worship tolerated by law (*b*), on Sundays, or on any day on which divine service is by authority ordered to be celebrated; or of or from any inhabitant of any parish or place, going to or returning from attending the funeral of any person who shall die and be buried in the parish or place in which any turnpike road shall lie; or from any rector, vicar, or curate going to or returning from visiting any sick parishioner, or on other his parochial duty within his parish; or for horses, carts, or

(*a*) But see 4 Geo. 4, c. 95, s. 10, *post*, p. 1361.

(*a*) See 1 & 2 Will. 4, c. 25, *post*, p. 1362.

(*b*) This enactment relieves dissenters from paying toll in going to and returning from their usual place of worship, though situate out of the parish in which they

reside; for they were held liable to pay toll, where the words of the exemption were merely "going to or returning from their proper parochial church, chapel, or other place of religious worship," as in this case the word "parochial" was held to extend over the whole clause; *Lewis v. Hammond*, 2 B. & Ald. 306.

waggons employed only in conveying any vagrant sent by a legal pass, or any prisoner sent by any legal warrant, or returning empty after having been so employed; or for any horses or carriages of whatsoever description, employed in conveying the mails of letters and expresses under the authority of the postmaster general, either when employed in conveying, fetching, or guarding such mails or expresses, or in returning back from conveying or guarding the same; or for the horses of any officers or soldiers on their march or on duty; or for any horses or other beast, or any carriage, employed in conveying, or returning empty from conveying,—having been employed only in conveying,—the arms or baggage of any officers or soldiers, or employed in conveying, &c. any sick, wounded, or disabled officers or soldiers; or for any waggon or other carriage whatsoever, or the horses drawing the same, employed in conveying any public stores belonging to his Majesty, or for the use of the King's forces, or returning empty from having been so employed; or for any carriage conveying volunteer infantry, or for any horse furnished by or for any person belonging to any corps of yeomanry or volunteer cavalry or infantry, and rode by him in going to or returning from any place appointed, for and on the days of exercise, inspection, or review, or on other public duty, provided such person shall be dressed in the uniform of his corps, and shall have his arms, furniture, and accoutrements, according to the regulations of such corps, at the time of claiming the exemption; or for any horses or carriages conveying any persons to or from any election of a knight of the shire for the county, in which such turnpike road shall be situated; or for any horses or carriages which shall only cross any turnpike road, or shall not pass above 100 yards thereon (c). But, by *sect. 33*, the exemption of persons going to or returning from places of divine worship is not to extend to any turnpike gate within five miles of the Royal Exchange, or of Westminster Hall.

By 4 Geo. 4, c. 16, s. 1, nothing contained in the last section of the 3 Geo. 4, c. 126, is to authorize any toll being taken for *lime* for

(c) This last exemption is re-enacted, *in totidem verbis*, by the 4 & 5 Vict. c. 33, s. 1. The exemption has been held to extend to carriages quitting the road to the opposite side to that on which they entered it, as well as on the same side; *Major v. Oxenham*, 5 Taunt. 340. And where a certain part of a turnpike road is not to be

repaired by the trustees, but by the county or some other persons, such part is nevertheless to be accounted in reckoning the 100 yards, for passing over which toll is demandable; *Bussey v. Storey*, 4 B. & Ad. 98; *Pope v. Langworthy*, 5 B. & Ad. 464.

the improvement of land, unless under the authority of any local act. But another doubt was raised as to the exemption of lime by the 5 & 6 Will. 4, c. 18, which enacts that no toll shall be demanded for the carriage only of dung, soil, compost, or manure for land, (*except lime*,) and the necessary implements used for filling the manure; and the cloth that may have been used in covering any hay, clover, or straw which may have been conveyed; this exemption (by *sect. 2*) not extending to manure, when toll is imposed on it by any local act. Whereupon it was again enacted by the 3 & 4 Vict. c. 51, that no toll is to be demanded for horses or carriages employed in carrying *lime* for the improvement of land, when they are exempted from toll by any local act.

By 4 Geo. 4, c. 95, s. 10, no exemption from toll shall be allowed for any waggon, cart, or other carriage, unless it shall have the sole of the bottom of the fellics of the wheels of the breadth or gauge of four and a half inches (except carts employed in carrying corn or grain in the straw, hay, straw, fodder, dung, or lime for the improvement of land, or other manure, or any plough, harrow, or implements of husbandry only); but the tolls imposed by the local act, as well as any additional toll for narrow wheels or overweight, shall be payable. And, by *sect. 17*, it is also declared, that no exemption shall extend to any additional toll for overweight, unless the carriage is specially exempted by any act from such additional toll.

By 3 Geo. 4, c. 126, s. 26, where under any local act there is an exemption from toll in respect of the carriage of manure, agricultural produce, or materials for repairing any road, such exemption shall extend to any waggon or carriage going empty, or loaded only with implements necessary for more convenient carriage or loading or unloading such lading, or returning empty or with such implements, having been so laden, notwithstanding the carriage shall go to or return from any parish or place in which the turnpike does not lie. It would seem, from the decisions under the clauses of exemption contained in former acts, that this section, being for the benefit of husbandry, ought to be liberally construed, and that it extends as well to carts going *laden* with manure to another parish, as to carts going empty (*d*).

By *sect. 27*, the driver of any empty cart or waggon, claiming the exemption from toll by reason of going for manure or materials for repair of the road, must nevertheless pay the tolls, and the collector

(d) *R. v. Adams*, 6 M. & S. 52; *Hickinbotham v. Perkins*, 8 Taunt. 795.

is to deliver him a special ticket, upon the production of which, on the return of the cart laden with manure or such materials, the toll is to be returned. Every collector, refusing to give such ticket on receiving the toll, or to repay the toll upon the return of the waggon or cart so laden and the redelivery of the ticket, is liable to a penalty of not more than 5*l.*, payable to the owner of the waggon or cart, upon conviction before one justice on the oath of one witness.

By *sect. 28*, no carriage laden with manure or road materials shall be liable for toll, by reason only of any baskets, empty sacks, or spade, shovel, or fork, necessary for loading or unloading such manure or materials being therein, if the loading is substantially manure for land or materials for the roads.

By 1 & 2 Will. 4, c. 25, s. 1, reciting that doubts had been entertained, whether under the provisions of the above enactment of 3 Geo. 4, c. 126, s. 32, cattle going to or from water or pasture, or from being shod or farried, are exempted from tolls, it is declared that no toll shall be taken for any horse, ass, sheep, swine, or other beast or cattle of any kind going to or from water or pasture, or to or from being shod or farried, provided they do not pass upon the turnpike road more than the space of two miles in going or returning. But, by *sect. 4*, the provisions of the act are not applicable to any turnpike gate, unless it is situate more than six miles from London bridge. A horse ridden by the owner of the cattle, in going to fetch them from pasture, does not come within the above exemption (*e*).

By 4 Geo. 4, c. 95, s. 26, nothing in the general turnpike acts is to extend to repeal any exemptions from toll allowed by any local act.

Penalty for improperly claiming Exemption.—By 3 Geo. 4, c. 126, s. 36, if any person shall, by any fraudulent or collusive means whatsoever, claim or take the benefit of any exemption from toll or from overweight, or for using any additional horses, or for any other exemption contained in that act, he is liable to a penalty not exceeding 5*l.* And by 9 Geo. 4, c. 77, s. 17, if any person shall claim the benefit of any exemption mentioned in any local act, he is subject to the same penalty.

Police Vans, &c.—By 3 & 4 Vict. c. 88, s. 1, (one of the acts for the establishment of county and district constables,) no toll shall be demanded or taken on any turnpike road or bridge for any horse, or police van, carriage, or cart, passing along such road or bridge, in

the service of the police established under the provisions of the 2 & 3 Vict. c. 93, provided the constable in charge of such horse, van, carriage, or cart, if not the chief constable, shall produce an order in writing under the hand of the chief constable, or shall have on his dress, according to the regulations of the police force, at the time of claiming the exemption. Every person who shall fraudulently claim or take the benefit of this exemption from toll, not being lawfully entitled thereto, is liable, for every offence, to a penalty not more than 5*l*. The proof of exemption lies on the person claiming the same.

As to exemption for back toll, see *ante*, 1. *General Regulations as to Tolls*, p. 1348.

5. *Toll-Houses and Toll-Gates.*

Power to erect and continue Toll-Gates, &c.]—By 9 Geo. 4, c. 77, s. 5, the trustees may continue any of the toll-gates or toll-houses standing or being in, upon, or across any turnpike road, or on the sides thereof, and from time to time, at any special meeting to be holden for that purpose, of which public notice specifying the time and place and the purpose thereof shall have been given in some newspaper circulated in the county through which such road passes, and also by affixing a copy of such notice on all the toll-gates or side-bars fourteen days previously to such meeting, may direct by some order in writing, signed by three at least of the trustees then present, that there be erected in, upon, or across any such turnpike road, or upon the sides thereof, when and where they shall judge necessary, such and so many toll-gates, turnpikes, side-bars and chains, with toll-houses, outhouses, and other conveniences (*f*) thereto, and also may take in and inclose on the sides of the road, or any part thereof, suitable garden spots for each of such toll-houses, not exceeding one-eighth of a statute acre to each toll-house; and may also at any such meeting, and by such order as aforesaid, direct any of such toll-gates, turnpikes, side-bars and chains to be taken down or discontinued, or to be removed and placed elsewhere, upon, across, or on the sides of such road, in such situations as to the said trustees may appear fit or eligible. But this enactment is not to authorize any toll-gate, &c. to be erected in any place where it is, or may be, provided by any local turnpike act there shall be none erected.

(*f*) Sinking a well is within the scope of the authority of the trustees, *Newman v. Fletcher*, 1 D. & R. 202.

When Justices may order removal of Gates.—By 3 Geo. 4, c. 126, s. 46, if the trustees shall exceed their power by erecting or continuing any gate or turnpike where they have not any power to do so, the court of quarter sessions, upon complaint of such excess of power in such trustees, may in a summary way hear and determine whether such power has been exceeded, and if it has, may order the sheriff of the county to remove any such gate or turnpike.

Toll-gates ought not to be erected in the middle of great towns, so as to obstruct the necessary intercourse (*g*).

Lamps at Toll-Houses.—By 7 & 8 Geo. 4, c. 24, s. 6, the trustees may order and direct one or more lamp or lamps to be placed and erected on, or against, or in front of each and every of the toll-houses, and may also direct at what times of the year, and during what hours, such lamp or lamps shall be kept lighted; and if any collector of the tolls on such road, or any lessee thereof, shall neglect or omit to observe and fulfil the order of the trustees in respect to the keeping and lighting of such lamp or lamps, he shall forfeit not exceeding 20s.; and in case any person shall damage or injure any lamp, or extinguish the light therein, he shall forfeit not exceeding 40s.

Table of Toll Tickets.—By 4 Geo. 4, c. 95, s. 28, the trustees are required to put up and continue at every toll-gate a table painted in distinct and legible black letters on a board with a white ground, containing at the top thereof the name of the gate at which the same shall be put up, and also a list of all the tolls payable at every such gate, distinguishing severally the total amount of tolls payable under any particular act or acts, and the different sorts of carriages for which they are to be paid, where there shall be any variation therein, and also a list of the several gates which shall be wholly or partially cleared by the payment of toll at the toll-gate or bar where such table of tolls shall be affixed; and the said trustees shall also provide tickets denoting the payment of toll, on which shall be specified the name of the gate at which the same respectively shall be delivered, and also the names of the several gates freed by such payment, one of which tickets shall be delivered *gratis* to the person paying the toll; and on the production of such ticket at any gate therein mentioned, as being cleared by the payment of the toll at the gate where such ticket was delivered, the person producing the same shall pass

through the gate or gates therein mentioned, without paying any further or additional toll.

Toll-Houses not wanted, to be pulled down.—By sect. 57, where any toll-house shall become useless and be no longer required for the purposes of the road, the trustees may sell or dispose of it; but they must cause it to be pulled down, and the materials thereof removed, and the site of the toll-house, together with the gardens and appurtenances thereunto belonging, may then be sold by the said trustees, in the same manner and under the same regulations with respect to any land not wanted for the purposes of the road.

By 3 Geo. 4, c. 126, s. 51, no toll house is to be rated to the poor, nor is the occupation of it to confer a settlement.

Wilfully destroying them.—By 7 & 8 Geo. 4, c. 30, s. 14, if any person shall unlawfully and maliciously throw down, level, or otherwise destroy, in whole or in part, any turnpike gate, or any wall, chain, rail, post, bar, or other fence belonging to any turnpike gate, or set up or erected to prevent passengers passing by without paying toll, or any house, building, or weighing engine erected for the better collection, ascertainment or security of any such toll; the offender is declared to be guilty of a *misdemeanor*.

6. *Letting the Tolls to Farm.*

What requisite to be done in Letting the Tolls.—By 3 Geo. 4, c. 126, s. 55, the trustees, at a public meeting, may let to farm the tolls of the several gates, although no express power shall have been given by any act for that purpose; and whenever any tolls shall be so let, the following directions shall be observed:—The trustees must cause notice to be given of the time and place for letting the same, at least one month before the day appointed for that purpose, by affixing the same upon every toll-gate belonging to the turnpike road, and also by insertion thereof in some public newspaper circulated in that part of the country, and specifying in every such notice the sum which the tolls produced in the preceding year, clear of the salary for collecting the same, in case any hired collector was appointed, and that they will let such tolls by auction to the best bidder, on his producing sufficient sureties for payment of the money monthly, or otherwise, (as in such notice shall be specified,) and that they will be put up at the sum which they were let for or produced in the preceding year, clear of the salary of the collector. To prevent fraud or any undue preference in the letting, the trustees are required to

provide a glass with so much sand in it as will run from one end of it to the other in one minute, which glass at the time of letting such tolls shall be set upon a table, and immediately after every bidding the glass shall be turned, and as soon as the sand is run out it shall be turned again, and so for three times, unless some other bidding intervenes; and if no other person shall bid until the sand shall have run through the glass three times, the last bidder shall be the farmer or renter of the tolls, and shall forthwith enter into a proper agreement for the taking thereof and paying the money at the time specified in such notice, with such surety or sureties for the payment thereof, and under such conditions and in such manner as the trustees shall think fit. If the person being the last bidder shall not forthwith enter into such agreement, the tolls may be put up again immediately for another bidder, and in like manner may be continued to be put up, until a bidder shall be found who shall enter into such agreement. By 4 Geo. 4, c. 95, s. 52, the trustees may let the tolls in several lots, and may put up each lot at such sum as they shall think fit. By 3 Geo. 4, c. 126, s. 55, in case no bidder shall offer, or the tolls shall not be let at such auction, the trustees may accept a private tender for the same, and demise or let the tolls for not less than the sum at which they were last let; or the trustees may appoint a collector of such tolls, or fix some future day for the letting thereof, as they shall judge most proper, upon giving such notice as aforesaid, and may in that case put them up at such sum as they shall think fit. If the person, who shall be the farmer or renter or collector of the tolls, shall take a greater or less toll from any person than what is authorized or directed by any turnpike act, he shall forfeit 5*l.*, and the agreement for renting the tolls shall, if the said trustees shall think fit to vacate the same, become null and void. At all such lettings the trustees shall be entitled to bid (*h*) for the tolls, either by themselves, or their clerk or treasurer, or any other person by them respectively authorized; but no tolls shall be demised for any longer term than three years at any one time.

How Rent to be paid and secured.—By sect. 56, on every such letting, the trustees may take of the renter thereof one, two, or more months' rent in advance, before they shall put him in possession of the toll-gate, bar, or toll-house; and in every agreement for such letting, the rent payable for such tolls shall be reserved monthly, or

(*h*) The 4 Geo. 4, c. 95, s. 53, very unnecessarily provides another enactment to the same effect.

otherwise, as in the notice for letting the tolls shall be specified; and the renter shall produce two sufficient sureties to join in the agreement, undertaking for the due and punctual payment of the rent. In every case where the terms of such agreement shall not be fulfilled, but the rent to be paid at the commencement of any one month shall not be paid when the same shall become due, but shall remain unpaid for three days after the same shall become due, the trustees may declare the agreement void, and may re-enter and take possession of any such toll-gate, bar, or toll-house, and the tolls there collected, and relet the same in manner before directed, or may appoint a collector or other fit and proper person to collect and receive the same, and put out and remove the person so failing in his agreement.

Tolls of an adjoining Trust may be farmed by the Trustees.—By 4 Geo. 4, c. 95, s. 54, the trustees, if they shall agree thereto at any public meeting to be holden for that purpose, may take to farm the tolls payable at any toll-gate or bar of any other road adjoining or near to the road under their care and management, and may receive such tolls, or reduce or discontinue them, as they shall see fit.

Contracts need not be under Seal.—By 3 Geo. 4, c. 126, s. 57, all contracts for the farming or letting of the tolls, signed by two of the trustees, or by their clerk or treasurer, and the lessee or farmer and his sureties, shall be valid, notwithstanding the same may not be by deed or under seal.

Where trustees agreed to let to N. the tolls for a year at a certain rent, and N., as renter of the tolls, and D., as a surety, severally promised the trustees that N. should pay the rent at the appointed times; it was held that the contract was several, and not joint, and that the trustees could not sue the parties jointly for arrears of rent (i). And where by a local act, prior to the 3 Geo. 4, c. 126, the rent on letting the tolls was required to be paid to the treasurer of the trustees, in default of which every such lease was declared to be null and void; it was held that such clause was still imperative, notwithstanding the above 55th section of the subsequent general act prescribes, that after the tolls shall have been let, the purchaser shall “enter into a proper agreement” for the taking thereof, and paying the rent “under such conditions and in such manner” as the trustees

(i) *Lee v. Nixon*, 1 Ad. & E. 201.

shall think fit (*k*). Where two persons fill the office of clerk to the trustees, both should join in signing a contract on the part of the trustees for the letting of the tolls (*l*).

Lessee may occupy Toll-house, and appoint persons to receive the Tolls.—By 4 Geo. 4, c. 95, s. 58, while the tolls are under lease, the lessee, or such other person as he shall appoint, may occupy the toll-house at which the tolls are to arise, for the purpose of collecting the same, but during such time only as the lessee shall duly and regularly pay his rent and perform the covenants of the lease, but no further or otherwise.

And by 3 Geo. 4, c. 126, s. 58, during such time as the tolls, or any part thereof, shall be leased to any person, the lessee or such other person as he shall by writing under his hand appoint, may demand and take the tolls, and use all such means and methods for the recovery thereof, as any collector appointed under any act of parliament is authorized to use; and such lessee or other person, so demanding and taking such tolls, shall be subject to the like pains, penalties and forfeitures, and to the like actions and prosecutions, as any collector of such tolls appointed by the trustees is subject or liable to.

Remedy for Non-payment of Rent.—By sect. 59, if the lessee neglects to perform the conditions on which the tolls have been let, or if the rent shall be in arrear for the space of seven days, or if the lease or agreement shall in any other manner become void, any justice may, by warrant under his hand and seal, order a constable or other peace officer, with such assistance as shall be necessary, to enter upon and take possession of any toll-house, toll-gate, bar, or chain, or weighing machine, and the buildings and appurtenances thereto belonging, and to remove and put out the lessee or other person found therein; together with his goods; and thereupon the trustees may, if they think fit, determine the contract for letting the tolls to such lessee.

7. *Mortgaging the Tolls.*

Power of Trustees, and Form of Mortgage and Assignment.—By 3 Geo. 4, c. 126, s. 81, the trustees may borrow and take up at interest, on the credit of the tolls, such sums of money as they shall from time to time respectively think proper, and may demise and mortgage the tolls, or any part or parts thereof, and the turnpikes

. (*k*) *Pearse v. Morrice*, 2 Ad. & E. 84.

(*l*) *Bell v. Dixon*, 9 Bing. 393.

and toll-houses for collecting the same (the costs and charges of which mortgages shall be paid out of the tolls), as a security to any persons who shall advance such money; which mortgages shall be in the words or to the effect following; (that is to say,)

"By virtue of an act passed in the third year of the reign of King George the Fourth, intituled, 'An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called England,' we, whose hands and seals are hereunto subscribed and set, being — of the trustees [or 'commissioners'] for putting into execution an act passed in the — year of the reign of —, intituled [*here set forth the title of the act under which the trustees or commissioners borrowing the money and granting the mortgage, shall act*], in consideration of the sum of £—— sterling advanced and paid by A. B. of —, to the treasurer of the said trustees [or 'commissioners'], do hereby grant and assign unto the said A. B. and his executors, administrators and assigns, such proportion of the tolls arising and to arise on the said turnpike road, and the toll-gates and toll-houses erected or to be erected for collecting the same, as the said sum of £—— doth or shall bear to the whole sum now or hereafter to become due and owing on the security thereof: To have, hold, receive and take the said proportion of the said tolls, toll-gates, toll-houses and premises, with the appurtenances, unto the said A. B. and his executors, administrators and assigns, for and during the residue of the term for which the said tolls are granted by the said last-mentioned act, unless the said sum of £——, with interest after the rate of — per centum per annum, shall be sooner repaid and satisfied. Given under our hands, this — day of —."

And copies of all such mortgages shall be entered in a book to be kept for that purpose by the clerk or treasurer to the trustees; for which entry such clerk shall be paid the sum of 5s. and no more out of the tolls; and which book may at all seasonable times be perused and inspected without fee or reward. All persons respectively, to whom any mortgage shall be thus made, or who shall be from time to time entitled to the money thereby secured, may assign or transfer their right and interest in such mortgage, and the principal money and interest thereby secured, to any other person; which assignment or transfer may be made in the following words, or words to the like effect, to be indorsed on such mortgage, or to be underwritten or thereunto annexed, and attested by one or more credible witness or witnesses; (that is to say,)

"I, A. B. [or 'I, C. D. assignee,' 'executor,' or 'administrator' of A. B., as the case may happen] do hereby assign and transfer this mortgage security, with all my right and title to the principal money thereby secured, and all interest now due and hereafter to grow due upon the same, unto E. F., his or her executors, administrators, and assigns. Dated this — day of —, 1843.

"Witness G. H."

(Signed) A. B. [or 'C. D.']

Which transfer shall be produced and notified to the clerk or trea-

suror of the trustees within two calendar months next after the day of the date thereof, who shall enter the same in the said book; for which entry the clerk or treasurer shall be paid the sum of 5s. and no more; and such transfer shall then entitle the assignee to the full benefit of such mortgage security. Every such assignee may in like manner assign or transfer the same, and so *toties quoties*; and it shall not be in the power of any person (except the person to whom the same shall be last transferred, his executors or administrators) to release, discharge, or make void the original mortgage security, or the monies due thereon, or any part thereof; and all persons to whom any such mortgage or transfer shall be so made, shall, in proportion to the sum thereby secured, be creditors on the tolls, toll-gates and toll-house, in equal degree one with another, or in such order as shall be agreed upon and stipulated by the trustees or commissioners at the time of the advance of their respective shares.

Mortgagees in possession to account.—By sect. 47, every mortgagee who shall take possession of any toll-gate or bar, or of any lands or tenements, the rents and profits whereof are appropriated to the repairs of any part of any turnpike road, shall within twenty-one days after he shall have received notice in writing from the trustees, render an exact account in writing of all monies received by him, or by any other person for his use and benefit, or by his authority, at such toll-gate or bar, or otherwise, and what he had expended in keeping or repairing the same, under a penalty of 50*l.* for any default, to be applied to the use of the road.

Penalty on Mortgagee improperly retaining possession.—By sect. 48, if any such mortgagee shall keep possession of any toll-gate or bar, and receive the toll thereat, or of any such rents and profits, after he shall have received the full sum due on his mortgage, and the interest thereof, with costs, he shall forfeit to the trustees double the sum of money he shall have received, over and above the sum due as aforesaid, with treble costs, to be recovered by the treasurer or clerk to the trustees by action of debt in any court of record, and to be applied to the use of the road.

One Mortgagee may bring Ejectment.—By sect. 49, if any mortgagee shall seek to obtain the possession of the toll-gates, bars, chains, toll-houses, and buildings, in order to pay himself the principal money and interest, or any part thereof, due to him, it shall be competent for him, as lessor of the plaintiff, and upon his demise only, and without uniting in such demise the other mortgagees, to

obtain such possession; but he is not to apply the tolls to his own exclusive use and benefit, but for the benefit of all the mortgagees, *pari passu*, and in proportion to the several sums which may be due to them as such mortgagees.

Where trustees under a local act granted a mortgage of the tolls in the form prescribed by the above 81st section of the 3 Geo. 4, c. 126, and by a subsequent act for making a new branch road, certain tolls were granted in respect of the new branch, to be subject to the debts incurred on the credit of the former tolls; and it was enacted that all monies due on such credit should be entitled to "a preference and priority of charge and payment," before any monies advanced for making the new branch; it was held, on an ejectment for the toll houses by the holder of a mortgage for monies lent to complete the branch road, that the words "priority of charge" did not prevent this mortgagee from acquiring a legal estate in the subjects mortgaged, and that he might recover the toll-houses and gates in ejectment (pursuant to the above section 49 of 3 Geo. 4, c. 126), only remaining accountable to the other mortgagees for such portion of the tolls as they were entitled to in respect of their advances (*m*).

Mortgage to be a charge on the Tolls granted by a subsequent Act.—By 9 Geo. 4, c. 77, s. 10, where at the time of the expiration or repeal of any local act, any monies which may have been borrowed shall be due and owing on the credit of the tolls thereby granted, the term and tolls to be granted by any subsequent local act for maintaining the road, are declared to be subject and liable to the payment of the monies so remaining due, and of all interest to grow due thereon, as fully and effectually, to all intents and purposes, as if such monies had been borrowed or become due on the credit or security of the tolls granted by such subsequent act. And all persons who may owe, or be liable to the payment of, any money to the trustees for carrying any such former act into execution shall be liable to the payment thereof to the trustees under the subsequent act, to be applied by them for the purposes of such subsequent act. And by sect. 11, all bonds, contracts, and agreements are to remain in full force, notwithstanding the repeal of any act.

Trustees may cancel Mortgages and execute others.—By sect. 12, the trustees may receive in and cancel all or any of the mortgages granted under any former act for the same turnpike road, and may

execute other mortgages instead, at the expense of the parties requiring the same.

By *sect. 13*, in all cases where it shall appear by the books kept by the clerk or treasurer to the trustees of any turnpike road, or by any satisfactory evidence adduced at any meeting of such trustees, that any person is a creditor on security of the tolls authorized by any local turnpike act, and that the mortgage or assignment of the tolls for securing any money has been lost, mislaid, or by accident destroyed, any three of the trustees may execute, at the expense of the person applying for the same, an assignment of the tolls by any such local act granted, for the sum of money mentioned in such original assignment or transfer.

When Trustees may pay off one Creditor.—By 4 Geo. 4, c. 95, s. 60, in case the trustees shall at any time be desirous of paying off any portion of the principal monies due and owing upon the credit of any turnpike road, where all the interest due thereon shall have been duly paid, they may, at any meeting to be holden according to the directions of any general or local act (notice thereof, and of the purposes thereof, being first given at least twenty-eight days preceding the same, by advertisement in some newspaper usually circulated in the neighbourhood of the road), instead of paying the same rateably amongst all the creditors, determine by lot to which of such creditors the whole, or any portion thereof, shall be so paid, and pay the same to such creditor only, or to any of the creditors, with the consent of all the other creditors.

By *sect. 61*, trustees are declared to be not personally liable for mortgages.

8. *Penalties for Injuries, Nuisances, and Annoyances.*

Ditches to be made by Occupiers of Lands.—By 3 Geo. 4, c. 126, s. 113, ditches, drains, or watercourses of a sufficient depth and breadth for keeping the road dry, are required to be made, scoured, cleansed, and kept open, and sufficient trunks, tunnels, plats, or bridges to be made and laid, where any carriageway or footway leads out of the road into the lands adjoining, by the occupier of such lands; and every occupier of any adjoining lands, through which the water hath used to pass from the turnpike road, is required, from time to time as often as occasion shall be, to open, cleanse, and scour the ditches, watercourses and drains, for such water to pass without obstruction; and every person making default in any of the matters

aforesaid, after ten days' notice to him given, incurs a penalty not exceeding 5*l*.

Surveyor may remove Nuisances, and turn Watercourses.—By *sect. 114*, the surveyor of every turnpike road, and such person as he shall appoint, may remove and prevent all annoyances on every part of the road, by filth, dung, ashes, rubbish, or any other matter or thing whatsoever being laid or thrown down upon the road, or upon any open common or waste land within eighty feet of the centre thereof, and dispose of the same for the benefit of such road, in case the owner thereof shall neglect to remove the same within twelve hours after notice in writing (signed by any two trustees or the surveyor) given to such owner for that purpose, or in case the owner is not known, then after a like notice affixed for three days on the nearest turnpike gate. He may also turn any watercourses, sinks, or drains running into, along, or out of any turnpike road, or any part thereof, to the prejudice of the same, and open, scour and cleanse any watercourses or ditches adjoining to the road, and make the same as deep and large as he shall think necessary, in case the owners or occupiers of the adjoining lands shall neglect to open, scour, or cleanse such watercourses or ditches, after seven days' notice in writing given for that purpose; and the charges thereof, and of removing any annoyances, to be settled by any one justice, shall be reimbursed to the surveyor by such owners or occupiers, and be recovered in the same manner as any penalty under the act. If, after the removal of any of such annoyances, any person shall again offend in the like kind, he incurs a penalty not exceeding 5*l*.

How Expenses of repairing Drains in Towns to be paid.—By *sect. 115*, where any gutter, drain, sink, sewer, or underdrain, under or at the sides or near any turnpike road, shall be used as well for the conveyance of the water from the road, as for conveying water, filth, or other matters from the houses or premises of the inhabitants of any town, street, or place, and no specific mode of repair, or persons liable to the expenses of maintaining the same shall be appointed, the expense of repairing the same shall be defrayed equally by the trustees of the turnpike road and by the inhabitants of the town or other place. In order to ascertain the proportion, the surveyor shall, as often as shall be requisite, repair the same, and shall then make out an account of the expenses, and produce the same to any two justices for the county, who are authorized to examine the accounts and statements produced to them, and inquire as to the per-

sons using such drain, and proportion the amount to be paid by the trustees and by the inhabitants using the same, and fix and ascertain the amount of such proportion, as they shall deem just and reasonable to be paid by the several parties. If any person shall neglect to pay the sum directed by the justices, the same may be levied by distress, by warrant under the hands and seals of any two justices for the county where the person shall reside.

Surveyor may cut Drains through adjoining Lands.—By 4 Geo. 4, c. 95, s. 67, the surveyor, and such other persons as shall be appointed by the trustees, may cut, make, or maintain drains or watercourses upon and through any lands lying contiguous to the road, and also make ditches in such places and in such manner as the surveyor, by order of the trustees, shall judge necessary, and make sufficient fences and barriers and other erections on any part of the road, in order to prevent any rivulet or current of water from flooding the same, as he shall judge necessary, making such satisfaction to the owners or occupiers of the lands to be used, cut through, or built upon, for the damages which they may sustain, as the trustees shall judge reasonable; and in case of any difference touching such damages, the same shall be finally settled by any two justices for the county or place in which the road shall lie.

Trees and Hedges obstructing the Road.—By 3 Geo. 4, c. 126, s. 116, the owners or occupiers of the land next adjoining to every turnpike road, shall cut, prune, and trim their hedges to the height of six feet from the surface of the ground, and also cut down, prune, or lop the branches of trees, bushes, and shrubs growing in or near such hedges or other fences adjacent thereto (such fences, trees, bushes, or shrubs not being in any garden, orchard, plantation, walk or avenue to a house, nor any tree, bush, or shrub, being an ornament or shelter to a house, unless the same shall hang over the road, or any part thereof, in such a manner as to impede or annoy any carriage or person travelling thereon), in such a manner that the turnpike road shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from the road to the damage thereof. If such owner or occupier shall not, within ten days after notice given by the surveyor for that purpose, cut, prune, and trim such hedges, or cut down, prune, or trim such branches of trees, bushes and shrubs in manner aforesaid, the surveyor may make complaint thereof to some justice, who shall summon the occupier before him to answer the complaint; and if it shall appear

to the justice, that such occupier has not complied with the requisites of the act in that behalf, the justice, upon hearing the surveyor and occupier, or his agent, (or in default of his appearance, upon having due proof of the service of such summons), may order the hedges to be cut, trimmed and pruned, and the branches of trees, bushes and shrubs to be cut down or pruned or trimmed, in such manner as may best answer the purposes aforesaid; and if the occupier shall not obey such order, within ten days after it shall have been made and he shall have had due notice thereof, he shall forfeit the sum of 2s. for every twenty-four feet in length of such hedge which shall be so neglected to be cut, trimmed and pruned, and the sum of 2d. for every tree, bush or shrub which shall be so directed to be cut down, pruned or trimmed; and the surveyor, in case of such default, is required to cut, prune and trim such hedges, and to cut down, prune or trim such branches of trees, bushes and shrubs, in the manner directed by such order; and such occupier shall be charged with and pay, over and above the said penalties, the charges and expenses of doing the same, or, in default thereof, such charges and expenses shall be levied, together with the said forfeitures, upon his goods, by warrant from a justice, in such manner as is authorized for forfeitures incurred by virtue of the act.

By *sect. 117*, no person shall be compelled, nor any surveyor permitted, to cut or prune any hedge at any other time than between the last day of September and the last day of March.

Encroachments on the Road.]—By *sect. 118*, if any person shall make any dwelling house or other building, or any hedge or other fence, on or at the sides of any turnpike road, in such manner as to reduce the breadth or confine the limits thereof, or shall fill up or obstruct any ditch at the side thereof; or shall make any dwelling house or other building, or any hedge or other fence, on any common or waste land on the side of the road, within the distance of thirty feet (if within three miles of any market town), or (if beyond that distance) within twenty-five feet from the middle or centre thereof; or shall make any drain, gutter, sink, or watercourse across, or otherwise break up or injure the surface of the road; or shall plough, harrow, or break up the soil of any land, or, in ploughing or harrowing the adjacent lands, shall turn his plough or harrow in or upon any land within the distances aforesaid from the middle or centre of the road, or make any other encroachment on the road, within the distances aforesaid; he shall forfeit 40s. to such person as shall make information of the same. The trustees may cause such house, build-

ing, ditch, or other encroachment to be taken down or filled up, or, where any ditch shall be filled up or obstructed, to be opened and cleansed at the expense of the person to whom the same shall belong; and any one justice, upon proof thereof to him made upon oath, may levy by distress as well the expenses of taking down or filling up or cleansing such house, building, ditches, or other encroachments, as the several penalties thereby imposed.

Riding on Footways, and various other Nuisances.]—By sect. 121, if any person shall *ride upon any footpath* (n) or causeway by the side of any turnpike road, made or set apart for the use or accommodation of foot passengers, or shall lead or drive any horse, ass, mule, swine, or cattle, or carriage of any description, or any wheelbarrow, truck, or sledge, or any single wheel of any waggon, cart, or carriage apart therefrom, upon any such footpath or causeway, or shall cause any injury or damage to be done to the same, or the hedges, posts, rails, or fences thereof; or shall wilfully pull down or *damage any bridge* (o), *wall, or any other building or erection*, made by the trustees, or repaired or repairable by them; or shall haul or draw upon any part of the road, any timber, stone, or other thing, otherwise than upon wheeled carriages, or shall suffer any timber, stone, or other thing which shall be carried principally or in part upon wheeled carriages, to drag or trail upon such road to the prejudice thereof; or shall use any tipstick, joggle, or other instrument, for the purpose of retarding the descent of any cart or other carriage down any hill, in such manner as to destroy, injure, or disturb the surface of the road; or shall in or upon such road, or by the side thereof, or in any exposed situation near thereto, kill, slaughter, singe, scald, burn, dress, or cut up any beast, swine, calf, lamb, or other cattle; or if any person, driving any horse or other beast on the road carrying any iron bar or rod basket or pannier, or any other matter or thing, shall place such bar or other matter or thing, so that any of them shall project more than thirty inches from the side of such horse or other beast, or so as in any manner to obstruct or impede the passage of any person, or any horse, beast, or carriage, travelling along the road; or if any hawker, higgler, gipsy, or other person, travelling with any machine, vehicle, cart, or other carriage, with or without any horse, mule, or ass, shall pitch any tent, booth, stall, or stand, or encamp upon or by the sides of any part of any turnpike

(n) See 7 & 8 Geo. 4, c. 24, s. 16, post, p. 1377.

(o) See 4 Geo. 4, c. 95, s. 72, post, p. 1378.

road; or if any blacksmith or other person occupying a blacksmith's shop, situate near any turnpike road, and having a window fronting the road, shall not by good and close shutters, every evening after it becomes twilight, bar and prevent the light from such shop shining into or upon the said road; or if any person shall make, or assist in making, any fire commonly called a bonfire, or shall set fire to or wantonly let off or throw any squib, rocket, serpent, or other firework whatsoever, within eighty feet of the centre of such road; or bait, or run for the purpose of baiting, any bull, or play at football, tennis, fives, cricket, or any other game upon such road, or on the side thereof, or in any exposed situation near thereto, to the annoyance of any passenger; or if any person shall leave any waggon, wain, cart, or other carriage whatever, upon such road, or on the side thereof, without any proper person in the sole custody or care thereof, longer than may be necessary to load or unload the same, except in cases of accident, and in cases of accident for a longer time than may be necessary to remove the same, or shall not place such waggon, or other carriage during the time of loading or unloading the same, or of taking refreshment, as near to one side of the road as conveniently may be, either with or without any horse or beast of draught harnessed or yoked thereto; or shall lay any timber, stone, hay, straw, dung, manure, soil, ashes, rubbish, or other matter or ~~thing~~ whatsoever upon such road, or upon the side thereof, or the footpath or causeway adjoining, to the prejudice of such road or footway, or to the prejudice, annoyance, interruption, or personal danger of any person travelling thereon; or shall suffer any water, filth, dirt, or other offensive matter or thing whatsoever, to run or flow into or upon such road or footpath from any house, building, erection, lands, or premises adjacent thereto; or if any person, driving any pigs or swine upon such road, shall suffer them to root up or damage the road, or the fences, hedges, banks, or copse, on either side thereof respectively; or if any person shall, after having blocked or stopped any cart, waggon, or other carriage, in going up a hill or rising ground, cause or suffer to be or remain on such road the stone or other thing with which such carriage shall have been blocked or stopped; or if any person shall pull down, damage, injure, or destroy any lamp or lamp post, put up, erected, or placed in or near the side of any turnpike road, or toll-house erected thereon, or shall extinguish the light of any such lamp; every person so offending is liable to a penalty not exceeding 40s., over and above the damages occasioned thereby.

By 7 & 8 Geo. 4, c. 24, s. 16, if any person shall injure, damage,

encumber, ride upon, drive upon, or otherwise use any public footpath or causeway, by the side of and adjacent to any turnpike road, to the prejudice, annoyance, interruption, or personal danger of any person travelling thereon; every person so offending shall be liable to the same penalties in respect of such offences, as are imposed in respect of such offences by the 3 Geo. 4, c. 126, whether such footpath or causeway be made maintained and repaired by the trustees of the turnpike road thereunto adjoining, or by the inhabitants of the parish wherein such footpath or causeway is situated, or by any other person whatever.

Destroying Table of Tolls, Fences, and other Injuries.]—By 4 Geo. 4, c. 95, s. 72, if any person shall wilfully pull down, break, injure or damage any *table of tolls* put up or fixed at any toll-gate or bar, or wilfully or designedly deface or obliterate any of the inscriptions, letters, figures, or marks thereon; or shall wilfully pull up, throw down, break, injure, or damage any *posts, rails, or fences*, placed or put up by order of any trustees, or their surveyor, either by the side of such road, or at or near to any pit or quarry used for the getting of stones gravel or other materials for the purposes thereof, in order to prevent accidents; or if any person shall wilfully cause any damage or injury to be done to any *bridge, arch, wall, or other building or erection* set up or erected by virtue of any act on any part of any turnpike road, or by the side thereof; or shall cast or throw any earth or rubbish, or other matter or thing, into any *drain, ditch, culvert, tunnel, or other watercourse*, made by virtue of any act, so as to obstruct the water from running or draining off the road; or if any person shall, without being thereto authorized by the surveyor, *shovel up, scrape, gather, or carry away*, any *stones, gravel, sand* or other materials, *slutch, dirt, mire, drift, or soil* from off any footpath or causeway, or any other part of such road; or shall in any manner wilfully prevent any other person from passing him (*p*), or any carriage under his care; or if any person shall dig, make, or use any pit for sawing of timber or wood, within thirty feet of the centre of the road, unless where enclosed by a fence from the road; every person so offending incurs the like penalty not exceeding 40s. for every such offence; one moiety of which is to be paid to the informer, and the other to the treasurer of the trustees, to be applied towards the repair of the road.

(p) And see 3 Geo. 4, c. 126, s. 132, *post*, p. 1832.

Stray Cattle.—By 4 Geo. 4, c. 95, s. 75, if any horse, ass, sheep, swine, or other beast or cattle of any kind, shall at any time be found tethered, or wandering, straying, or lying about any turnpike road, or on any part thereof, (except on such parts as lead or pass through or over any common or waste or uninclosed ground,) the surveyor of the road, or any other person, may seize and impound every such horse, or other beast or cattle in the common pound (if any) of the parish or place where the same shall be found, or in such other place as the trustees shall provide for that purpose, and there detain such cattle until the owner shall, for every beast so impounded, pay the sum of 2s., together with the reasonable charges and expenses of impounding and keeping the same, to the treasurer, clerk, or surveyor of the road, to be applied in aid of the tolls of such road. If the penalty, charges and expenses shall not be paid within five days after such impounding (notice being thereof first given to the owner, if known, at the time, or if not known, by affixing written notices at the two next toll-gates on the road nearest to the place where the cattle shall be impounded), any justice may order the beast or cattle to be sold, except where it shall be made to appear to such justice, that the animal escaped from any inclosure, by any gate or fence being wilfully or negligently left open or destroyed by any person not being owner or occupier of such inclosure, or employed by such owner or occupier; in which case the justice may remit the said penalty. The money arising from any such sale, after deducting the penalty and charges and expenses of impounding keeping and selling such cattle, shall be paid to the owner; but if not known, and no application shall be made for the money arising from such sale within twenty-one days after it shall have taken place, the money shall be applied in the same manner as the penalty of 2s. But no owner of any cattle impounded shall in any case pay more than the sum of 5*l.*, over and above the charges and expenses of impounding and keeping the same, for any number of cattle impounded at one time; and nothing in this clause shall be construed to take away any right of pasturage which may exist on the side of any turnpike road.

By 3 Geo. 4, c. 126, s. 123, in case any person shall release, or attempt to release, any cow, horse, ass, swine, or other live stock or cattle, from the pound or place where the same shall be impounded; or shall pull down, damage, or destroy the same pound or place, or any part thereof, or any lock or bolt belonging thereto, or with which the same be fastened; or shall rescue or release, or attempt to rescue or release, any distress or levy which shall be made under the autho-

urity of the act, until the cattle so impounded, or the distress so made, shall be discharged by due course of law; every person so offending, upon conviction before one justice, on the oath of one credible witness, may be committed to the common gaol or house of correction, not exceeding three calendar months.

Gates and Windmills.—By 3 Geo. 4, c. 126, s. 125, no door or gate of any building, park, paddock, field, or inclosure whatsoever, shall be made to open into or towards any part of any turnpike road, or of any footpath belonging thereto, or be suffered to continue so to open, except the hanging post thereof shall be fixed or placed so far from the centre of any part of such turnpike road, as that no part of such door or gate shall when open project over any part of such turnpike road, or any footpath belonging thereto. The occupier of any such building or inclosure having any door or gate opening outwards, contrary to the meaning of the act, shall, within fourteen days after notice to him given, either personally or in writing, from the surveyor of the turnpike road, cause such door or gate to be hung, so that no part of the same when open shall project over any part of the road, or any footpath belonging thereto; and in default thereof, the surveyor may cause the door or gate to be hung according to the intention of the act, and the person guilty of such neglect or default shall, upon complaint made to any justice, and upon conviction upon the oath of one credible witness, pay to such surveyor such sum as the justice shall direct, to defray the expenses of making such alteration, and shall also forfeit not exceeding 40s. for his neglect.

By *sect. 127*, no person shall erect or cause any windmill to be erected, within the distance of 200 yards from any part of any turnpike road, under the penalty of 5*l.* for each and every day such windmill shall continue. But this enactment is not to be construed to render legal the re-erection or continuance of any windmill, in any case where by the common law such windmill shall be a public or private nuisance.

Waggons, Carts, and other Carriages.—By 3 Geo. 4, c. 126, s. 126, the trustees of every turnpike road, at any meeting to be held for that purpose, on ten days' notice in writing of such meeting being affixed upon the turnpike gates on the road, may order that in all cases where any waggon or cart shall descend any hill with either of the wheels locked, a *skid-pan* or *slipper* shall be placed at the bottom of such wheel, during the whole time of its being so locked, in such manner as to prevent the road from being injured; and whilst any

such order shall be in force, every person who shall drive, or act as the driver of, any waggon or cart down any hill with either of the wheels locked, and without so using or having such skid-pan or slipper at the bottom of such wheel, shall forfeit not exceeding 20s. A copy of such order, however, must be affixed on all the turnpikes standing on the road, for thirty days at least before the same shall be in force.

By *sect. 130*, any one person may act as the *driver of two carts*, provided they are not drawn by more than one horse each, and that the horse of the hinder cart be attached by a rein to the back of the foremost cart. If such horse shall not be so attached, the driver of the carts shall forfeit the sum of 20s., to be recovered as other penalties under the act. This enactment, however, is not to extend to carts travelling on any turnpike road within ten miles from the cities of London or Westminster.

By *sect. 131*, no cart or waggon travelling on any turnpike road shall be driven by any person who shall not be of the *full age of thirteen years*, under a penalty not exceeding 10s., to be paid by the owner of such cart or waggon.

By *sect. 132*, if the *driver* of any waggon or cart shall *ride thereon*, not having some other person on foot or on horseback to guide the same, (such light carts as are usually driven with reins, and are then conducted by some person holding the reins of the horse or horses, not being more than two, drawing the same, excepted); or if the driver of any carriage whatsoever, shall, by negligence or wilful misbehaviour, cause any hurt or damage to any person or carriage passing or being upon such road, or shall quit the road and go on the other side the hedge or fence inclosing the same, or wilfully be at such distance from such carriage, or in such a situation whilst it shall be passing upon the road, that he cannot have the direction and government of the horses or cattle drawing the same; or if any person shall drive, or act as the driver of, any coach, post chaise, or other carriage let for hire, or waggon, wain, or cart, not having the owner's name painted thereon (*p*), or shall refuse to discover the true christian and surname of the owner or principal owners of such carriage; or if the driver of any carriage whatsoever, meeting any other carriage, shall not keep his own carriage on the left or near side of the road; or if any person shall in any manner wilfully prevent any

(p) By 4 Geo. 4, c. 95, s. 15, the owner is also liable to a like penalty, for using, or allowing the waggon to be used, or if any false or fictitious name is painted on it.

other person from passing him (*q*), or any carriage under his care, or by negligence or misbehaviour prevent, hinder or interrupt the free passage of any carriage, or of his majesty's subjects, on any turnpike road; the offender, being convicted on the view of a justice, or by the oath of one credible witness, before any justice of the limit where such offence shall be committed, or where such offender shall be apprehended, shall forfeit not exceeding 40s. in case such driver shall not be the owner of such carriage, and in case he be the owner, then not exceeding 5*l*.; in either of which cases, he shall, in default of payment, be committed to the house of correction not exceeding one month. Every driver so offending may, with or without any warrant, be apprehended by any person who shall see such offence committed, and shall be conveyed before some justice to be dealt with according to law; and if in any of the cases aforesaid, he shall refuse to discover his name, the justice may commit him to the house of correction not exceeding three months, or proceed against him for the penalty aforesaid, by a description of his person and the offence only, without adding any name or designation, but expressing in the proceedings that he refused to discover his name.

By 4 Geo. 4, c. 95, s. 76, if any person or persons, having the care of any waggon, wain, cart, or other such carriage, conveying goods for hire or reward, or for sale, shall not chain or fasten any dog, that may be attending him or them on any turnpike road, to such waggon, wain, cart or carriage, every person so offending shall forfeit and pay any sum not exceeding 20s.

By *sect. 2*, the several nails of the *tires of the wheels* of every waggon, cart, or other such carriage, shall be so counter-sunk as not to project beyond one quarter of an inch above any part of the surface of the tire; and if any waggon, cart, or other such carriage be drawn or used with any wheel constructed otherwise, the owner shall forfeit not exceeding 40s., and the driver not exceeding 20s., for each time that the waggon or cart shall be used or drawn.

By *sect. 16*, if any waggon or cart, built or constructed to be and usually used on any railway or tramroad, shall be drawn or pass loaded on any turnpike road, out of and away from such railway or tramroad, for the distance of more than 100 yards, the owner or proprietor of such waggon or cart shall forfeit 40s., and the driver, not being the owner, 20s., for every time such waggon or cart shall be so drawn and pass.

(*q*) And see 4 Geo. 4, c. 95, s. 72, *ante*, p. 1378.

Where the Owner liable to the Penalty.—By 4 Geo. 4, c. 95, s. 73, in case the driver of any waggon, cart, or of any coach or other carriage, shall offend against any of the above provisions, whereby any penalty shall be incurred, and shall refuse to give his name, or shall abscond or absent himself so as not to be found, any justice before whom complaint shall be made, may issue a summons requiring the owner of such carriage to appear before him; and if he shall not appear, or, appearing, shall not then; or within ten days thereafter, produce the driver, or disclose his name and place of abode, the justice, on an examination of the circumstances, and ascertaining by the examination of witnesses on oath that such offence has been committed by such driver, shall order and adjudge that the penalty incurred by the driver shall be paid by the owner; which shall be recovered and applied in manner directed by the 3 Geo. 4, c. 126.

7. Proceedings against Offenders, and Recovery and Application of Penalties.

Trustees may direct Prosecutions.—By 3 Geo. 4, c. 126, s. 133, the trustees at a public meeting may direct prosecutions by indictment, or otherwise, against any offender for any nuisance or other offence, or to recover any penalty, at the expense of the revenues of the trust.

Apprehension of Offenders.—By sect. 140, any of the trustees of any turnpike road, or their clerk, collectors, surveyors, or other officers respectively, and such other persons as he or they shall call to his or their assistance, may, without any warrant or other authority, seize and detain any unknown person who shall commit any offence, and take him before any justice near to the place where the offence shall be committed, or such offender shall be apprehended; and such justice is required to proceed against such offender.

Proceedings may be by Summons.—By 4 Geo. 4, c. 95, s. 83, where any penalty is by any turnpike road act recoverable before a justice, the justice may summon the party complained against before him, and on such summons hear and determine the matter of the complaint, and convict the offender, although no information in writing shall have been exhibited before him.

Recovery and Application of Penalties.—By 3 Geo. 4, c. 126, s. 141, all penalties (the manner of recovering whereof is not otherwise directed), shall, upon proof and conviction of the offence, before any justice for the county, riding, or place where the offence shall have been

committed, by the oath of any credible witness, be levied, together with the costs, by distress and sale of the goods of the offender, by warrant under the hand and seal of such justice; and in case any penalty shall not be forthwith paid upon conviction, the justice may order the offender to be detained until the return of the warrant of distress, unless he shall give sufficient security for his appearance before the justice on the return of the warrant, not being more than seven days from the time of taking any such security. If, upon the return of the warrant, it shall appear that no sufficient distress can be had, the justice is required, by warrant under his hand and seal, to cause the offender to be committed to the common gaol or house of correction of the county or place where the offender shall be or reside, not exceeding three calendar months. All penalties, the application of which is not otherwise directed, are to be paid, one moiety to the informer, and the other to the treasurer to the trustees, to be applied for the purposes of the road.

By *sect. 143*, if any penalty or forfeiture exceeds 20*l.*, it is only recoverable by action; but if it shall not exceed that sum, and shall be more than 5*l.*, it is recoverable only by information before a justice, subject to appeal; and if it shall not exceed the sum of 5*l.*, the same shall in like manner be recoverable only by information before a justice, and no writ of *certiorari* to remove the same shall be allowed.

By 3 Geo. 4, c. 126, s. 54, if any toll collector who incurs any penalty shall abscond, the penalty may in that case be levied on the lessee of the tolls.

Damages in addition to Penalties.—By 4 Geo. 4, c. 95, s. 69, where any damages or charges are directed by any turnpike act to be paid in addition to the penalty for any offence, the amount, in case of dispute respecting the same, shall be settled, ascertained, and determined by the justice before whom the offender shall be convicted, who is required, on nonpayment thereof, to levy the same by distress, in the same manner directed by the 3 Geo. 4, c. 126, for levying any penalty.

Limitation of Prosecution.—By 9 Geo. 4, c. 77, s. 18, no person can be convicted in a summary way before a justice, after the expiration of six months from the time of the commission of the offence.

Appeal and Certiorari.—By 4 Geo. 4, c. 95, s. 87, if any person shall think himself aggrieved by any order or judgment of any justice or trustees, except where the order or judgment is declared to

be final and conclusive, the party may appeal to the next quarter sessions, giving to the justice or trustee notice of appeal, and of the matter thereof, within six days after the cause of complaint shall arise, and within four days after such notice entering into a recognizance, with two sufficient sureties, to try such appeal. Every justice or trustee having received such notice, must return all proceedings touching the matter of such appeal to the sessions. No proceedings shall be quashed for want of form, or be removed by *certiorari*, or any other writ or process. Where there is not time to give such notice and enter into such recognizance before the next sessions after the conviction, the appeal may then be made to the next following sessions. But no appeal is allowed, where the penalty shall not exceed 40s.

Evidence and Witnesses.—By 3 Geo. 4, c. 126, s. 137, no conviction shall be had, unless upon the view of a justice convicting, or on confession of the party accused, or upon the oath of one or more credible witness or witnesses; and any inhabitant of any parish, township, or place in which any offence shall be committed, shall not be deemed an incompetent witness by reason of his being an inhabitant of such parish, township, or place; and any justice may act in the execution of the act, notwithstanding he may be a creditor, or a trustee or commissioner for making, repairing, and maintaining the roads, on which any offence shall be committed.

By 4 Geo. 4, c. 95, s. 84, no person shall be deemed incompetent to give evidence, by reason of being a trustee or commissioner of a turnpike road, or a mortgagee or creditor of the tolls thereof, or a lessee or collector of such tolls, or a treasurer, clerk, surveyor, or other officer under any turnpike act.

By 4 Geo. 4, c. 126, s. 138, if any person, after having been paid or tendered a reasonable sum for his expenses, shall be summoned as a witness to give evidence before any justice of the peace, touching any matter of fact contained in any information or complaint for any offence relating to turnpike roads, and shall refuse or neglect to appear at the time and place for that purpose appointed, without a reasonable excuse; or appearing, shall refuse to be examined upon oath, and give evidence before such justice; he shall forfeit for every such offence not exceeding 40s.

8. *Actions.*

By 3 Geo. 4, c. 126, s. 144, no distress is to be deemed unlawful for want of form in any proceeding relating thereto; but the party

aggrieved may recover any special damage in an action on the case, provided no sufficient tender of amends be made before action brought; and if no tender be made, the defendant may pay money into Court.

By *sect. 147*, all actions for any thing done in pursuance of the act must be commenced within three months after the fact committed, and be brought in the county where the cause of action shall have arisen. The defendant may plead the general issue, and give the act in evidence; and if the plaintiff shall become nonsuit, or have a verdict or judgment against him, the defendant may recover treble costs.

By *sect. 143*, when the action is for a penalty exceeding 20*l.*, there must be twenty-one days' notice given to the defendant previous to the commencement of the action, which must be brought within three calendar months after the commission of the offence.

By 4 Geo. 4, c. 95, s. 61, the costs of any action, or other proceeding, brought against any trustee for any thing done in pursuance of any turnpike act, are to be defrayed out of the tolls.

Where an action is brought against a toll collector to recover the amount of tolls improperly collected by him, the venue must be laid in the county where the tolls are collected, and he is entitled to twenty-one days' notice of the action (*r*). In an action against a trustee, for a penalty under the 65th section of 3 Geo. 4, c. 126, for letting his horse and cart out to hire for the use of the road, a notice, not stating that the defendant, when he let out his horse and cart, was acting as a trustee, is bad; and if the notice be bad, the plaintiff is barred not only of his right to costs, but of his right to sue (*s*). A notice of action against a toll-gate keeper "for demanding and taking of the plaintiff toll for and in respect of certain matters and things exempted from the payment of toll in and by a certain act of parliament, &c." is uncertain and bad (*t*).

9. *Forms of Proceedings.*

By 3 Geo. 4, c. 126, s. 148, the forms of proceedings relative to the several matters contained in the act, as set forth in the schedule, may be used on all occasions, with such additions and variations only as may be necessary to adapt them to the particular exigencies of the case, and no advantage shall be taken for want of form in any such proceedings.

(*r*) *Waterhouse v. Keen*, 4 B. & C. 200.

(*s*) *Towsey v. White*, 5 B. & C. 125.

(*t*) *Freeman v. Line*, 2 Chit. R. 672.

1. *Form of Annual Statement required by the 3 & 4 Will. 4, c. 80, s. 1, to be transmitted by the Clerk of the Trustees to the Secretary of State (u).*

General statement of the income and expenditure of the turnpike trust, in the county of —, between the 1st day of January, —, and the 31st day of December, —.

INCOME.		£	s.	d.	EXPENDITURE.		£	s.	d.
Balance in treasurer's hands, brought forward					Balance due to the treasurer, brought forward				
Revenue received from tolls					Manual labour				
Parish composition in lieu of statute duty					Team labour and carriage materials				
Estimated value of statute duty performed					Materials for surface repairs				
Revenue from fines					Land purchased				
from incidental receipt					Damage done in obtaining materials				
Amount of money borrowed on the security of the tolls					Tradesmen's bills				
					Salaries : treasurer				
					clerk				
					surveyor				
					Law charges				
					Interest of debt				
					Improvements				
					Debts paid off				
					Incidental expenses				
					Statute duty performed, estimated value				
Balance due to the trust					Balance due to treasurer				

DEBTS.		Rate of Interest per cent.		ARRAERS OF INCOME.		Insert the Name and Place of Abode of the Treasurer, Clerk, General and Superintending Surveyor below.		
£	s.	d.	£	s.	d.	£	s.	d.
Bonded or mortgage debts						Arrears of tolls for current year		
Floating ditto						Arrears of parish composition ditto		
Unpaid interest						Arrears of any other receipt ditto		
Balance due to the treasurer						Arrears of former years		
Total debts						Total arrears		

(u) See ante, p. 1331.

2. *Form of the Estimate required by the 3 & 4 Will. 4, c. 80, s. 4, to be laid by the Clerk before the Annual Meeting of the Trustees (x).*

An estimate of the expense of maintaining the turnpike trust in the county of —, between the 1st day of January, —, and the 31st December, —.

	£	s.	d.
Manual labour.....			
Team labour and carriage.....			
Materials delivered on the road, exclusive of carriage			
Land purchased			
Damage done in obtaining materials			
Tradesmen's bills.....			
Salaries.....			
Law charges.....			
Interest of debt			
Watering the roads			
Lighting ditto			
Incidental expenses.....			

Date of the existing act of parliament,

The length of the trust, — miles, distinguishing main from branch roads. . .

State the description and quantity of materials used on the trust, with the price per yard or ton; and if the damages in obtaining materials are paid for at per yard or ton, state the price.

3. *Bond from the Surveyor, under 3 Geo. 4, c. 126, s. 76 (y).*

We, A. B., surveyor of the turnpike roads, under an act passed in the — year of the reign of King George the —, "For" [state the principal part of the title of the local act], and C. D. of —, are bound to E. F. of —, in the sum of — pounds, to be paid to the said E. F. his executors, administrators, and assigns, for which payment we hereby bind ourselves severally, and each of our heirs, executors, and administrators.

Dated the — day of —.

The condition of this bond is such, that if the said A. B., his executors, or administrators, shall duly and faithfully account for, apply, and pay all and every the sum and sums of money which have come, or shall come, to his hands, as surveyor of the turnpike road aforesaid, according to the direction and true intent and meaning of the said act, and of the statute made in the third year of the reign of King George the Fourth, "For regulating Turnpike Roads," then this bond to be void, or else to remain in full force.

[The bond from the treasurer will be in the same form.]

(x) See ante, p. 1332.

(y) This form is given by 3 Geo. 4, c. 126.

4. *Summons of an Officer to attend a Justice, to account for Monies received under the 4 Geo. 4, c. 95, s. 47 (s).*

County of —, }
to wit. } To C. D. of —.

Whereas complaint hath been made to me, J. P. esquire, one of her Majesty's justices of the peace in and for the said county, by A. B., on behalf of the trustees of the turnpike road [*describing it*], appointed by and acting under an act passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act to amend the general Laws now in being for regulating Turnpike Roads in that part of Great Britain called 'England';" and also an act passed in the fourth year of the reign of his said late Majesty, intituled "An Act," &c. [*set forth the title of this act*], and also an act passed in the — year of the reign of his late Majesty King — the —, intituled "An Act," &c. [*set forth the title of the local act*]: That you, C. D., being one of the officers appointed by the trustees of the said turnpike road, although thereunto required by the said trustees, have refused and neglected to produce and deliver to them, or to such person and within such time as they the said trustees appointed and limited for that purpose, and that you still refuse and neglect to produce and deliver to them or him, true, exact, and perfect accounts in writing under your hand, of all monies which you have received to the time when such accounts were required to be delivered as aforesaid, by virtue of the said acts, or any or either of them, and how much thereof has been paid or disbursed, and for what purposes, together with the proper vouchers for such payments: These are therefore to require you personally to appear before me at —, in the said county, on the — day of — next, at the hour of — in the — noon, to answer to the said complaint made by the said A. B., who is likewise directed to be then and there present to make good the same. Herein fail not. Given under my hand and seal, this — day of —.

J. P. (L. S.) (a).

5. *Warrant to distrain for the Money found due.*

County of }
—, } To E. F., the constable of —, in the said county.

Whereas complaint having been made to me, J. P. esquire, one, &c. by A. B. on behalf, &c. [*set forth the complaint as in the summons*], I, the said justice, did thereupon, by warrant under my hand and seal, duly summon the said C. D. to appear before me at — this day; and the said C. D. having appeared before me at such time and place, pursuant to the said summons, I, the said justice, did thereupon proceed to hear the matter of such complaint in a summary way: And the said C. D. having produced certain accounts of or concerning the matters aforesaid, I did proceed according to the directions of the statute in that case provided, to settle the said accounts: And it manifestly appearing to me, upon the inspection of the said accounts so produced as aforesaid, that the sum of £—, being part of the money which has been collected and received by the said C. D. in the behalf and on the account aforesaid, is in the hands of the said C. D., and hath been by him neglected to be paid as aforesaid, contrary to the directions of the statute in such case made and provided:

(s) See ante, p. 1331.

(a) The 47th section of the 4 Geo. 4,

c. 95, directs the summons to be under hand and seal.

These are therefore, in her Majesty's name, to command you to levy the said sum of £—— by distress of the goods and chattels of him the said C. D.; and if, within four days next after such distress by you taken, the said sum, and the charges of distraining and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the said sum of £—— to the said trustees, or such person as they shall for that purpose appoint, returning the overplus on demand to him the said C. D. (the reasonable charges of distraining and selling the said distress being first deducted): And if no goods and chattels of the said C. D. can be found sufficient to answer and satisfy the said sum, that then you certify the same to me, together with this warrant. Given under my hand and seal, the —— day of ——.

6. Commitment for want of Distress.

County of ——, } To the constable of ——, in the said county, and to the keeper
to wit. } of the common gaol at ——, in the said county.

Whereas complaint, &c. [state the complaint and conviction as in the summons and warrant of distress], and whereas on the —— day of ——, in the year aforesaid, I did issue my warrant to the constable of ——, to levy the sum of £—— by distress and sale of the goods and chattels of the said C. D.; and it duly appears to me, upon the oath of the said constable, that the said constable hath used his best endeavours to levy the said sum of £——, on the goods and chattels of the said C. D., but that no goods and chattels of the said C. D. can be found sufficient to answer and satisfy the said sum: These are therefore to command you, the said constable, to apprehend the said C. D., and him safely to convey to the common gaol at ——, in the said county, and there deliver him to the keeper thereof, together with this precept: And you, the said keeper, are hereby commanded to receive and keep in your custody the said C. D., until he shall have accounted for and paid the full amount of the said sum of £——; or compounded with the said trustees, and paid such composition in such manner as the said trustees shall appoint: Provided that the said C. D. shall not be detained in prison for a longer space of time than six calendar months; And for so doing this shall be your sufficient warrant. Given under my hand and seal, the —— day of ——, in the year of our Lord 1843.

7. Agreement by Subscription for advancing Money to make and repair a Turnpike Road or Highway (b).

We, whose names are hereunto subscribed, do agree to advance and pay the several sums wrote by us opposite to our names, unto ——, to be laid out and expended in the making and repairing a certain highway leading from —— to ——, after an act of parliament shall be obtained for making the same turnpike road, upon having the tolls to be collected upon such turnpike road assigned and made over to us, as a security for the respective sums so to be advanced by us, together with interest for the same after the rate of —— per centum per annum; which sums we do hereby severally agree to pay by instalments, in the following manner, viz., one fourth part thereof on the —— day of —— next; one other fourth part [&c. &c. &c.] Dated this —— day of ——.

(b) This form is given by 3 Geo. 4, c. 126. And see 9 Geo. 4, c. 77, s. 7, ante, p. 1340.

8. *Notice of Trustees to the Owner and Occupier of Land, requiring him to contract with them for the Sale of it, under 3 Geo. 4, c. 126, s. 85 (c).*

To A. B., of —, and C. D., of —.

Whereas you the said A. B. are the owner of, or the person interested in, a certain piece of land situate and being in the parish of —, in the county aforesaid, now in the occupation of you the said C. D., as the tenant thereof, &c. [*here describe correctly the boundaries, abutments, and dimensions of the land*]: And whereas the said piece of land is situate within the distance of 100 yards (d) from the line or course of the turnpike road, from — to —, in the county aforesaid, and no dwelling-house or other building is erected on the said land, or any part thereof, and no part of such land is a garden, yard, or paddock, or any park, planted walk, or avenue to a house, or any inclosed ground planted as an ornament or shelter to a house, or planted and set apart as a nursery for trees: And whereas at a meeting of the trustees appointed and acting under, and by virtue, and in execution of an act of parliament, passed in the — year of the reign of his late Majesty King William the Fourth, intituled “An Act, &c.” [*here set out the title of the local act*], holden at —, in and for the said county, it was determined by the said trustees to be necessary for the improvement of the said road to purchase, and they thereupon ordered to be purchased, the said piece of land, for the purpose of diverting and improving the said road: We, therefore, the undersigned trustees, acting in the execution of the said act of parliament, and other acts of parliament now in force relating to turnpike roads, and being the major part of the trustees assembled at the said meeting, do hereby give notice and require you respectively to contract and agree with the said trustees for the purchase by them of the said piece of land for the purpose aforesaid, and for the value and recompense which you may respectively be entitled to from them in that behalf, and for the loss or damage which you may respectively sustain, by reason of the said trustees purchasing and using the said piece of land for the purpose aforesaid: And we do hereby further give you, and each of you, notice, that in case you neglect or refuse, for the space of thirty days next after the receipt of this notice, to treat for the purchase of the said land by the said trustees, or shall not agree with the said trustees in the premises, or by reason of absence shall be prevented from treating for such purchase, then the said trustees will cause such value or recompense, loss or damage, to be inquired into and ascertained by a jury of twelve indifferent men of the said county, and will proceed thereupon according to the provisions of the several statutes made and now in force in that behalf. Dated this — day of —, in the year of our Lord 1843 (e).

9. *Precept to summon a Jury thereon.*

To the sheriff of the county of —.

Whereas A. B., of —, is the owner of, or the person interested in, a certain piece of land, &c. [*describing it as in the above notice*], and C. D., of —, is the tenant or occupier of the said piece of land: And whereas at a meeting of the trustees, &c. [*here set forth the resolution of the trustees to purchase the land, as in the above notice*]:

(c) See *ante*, p. 1336.

(d) See 4 Geo. 4, c. 95, s. 65, *ante*, p. 1335.

(e) This notice should be signed by the major part of the trustees assembled at the

meeting (the whole number present not being less than three) when this notice was determined upon. See the 4 Geo. 4, c. 95, s. 39, *ante*, p. 1325.

And whereas on the — day of — last, three of the said trustees, being the major part of the said trustees assembled at the said meeting, did give the said A. B. and C. D. notice in writing of the said intention and determination of the said trustees, and did thereby require them respectively to contract and agree, &c. [*here recite the remainder of the above notice*]: And whereas the said A. B. and C. D. did not, nor did either of them, within thirty days next after such notice, or at any other time, contract or agree with the said trustees, according to the requisition of the said notice: And whereas the said piece of land required by the said trustees is situate within the distance of 100 yards, &c. [*pursue this allegation as in the above notice*]: Now you, the said sheriff, are hereby required and commanded forthwith to empanel, summon, and return twenty-four indifferent men of the county of —, qualified to serve upon juries, to be and appear before the said trustees at the house of —, in the town of —, in the said county, between the hours of — and — o'clock in the forenoon of the — day of — instant, in order that a jury of twelve men may be then and there chosen and sworn to inquire into and ascertain the value of the said piece of land, and the recompense to which the said A. B., as such owner and person interested, and the said C. D., as such tenant or occupier, may be entitled, and the damage or loss which may be sustained by them respectively, in consequence of the said trustees requiring and taking such piece of land for the purpose aforesaid. Given under our hands and seals at —, this — day of —, 1843 (f').

10. Notice to the Owner of the Land of the intended Inquisition.

To A. B., of —.

Whereas you, the above named A. B., are the owner of, or the person interested in a certain piece of land, &c. [*describing it as in the first notice*], of which piece of land C. D. is the tenant or occupier: Now you are hereby required to take notice, that on the — day of — instant, between the hours of — and — o'clock in the forenoon of the same day, at the house of —, in the town of —, in the county aforesaid, a jury will be duly chosen and sworn before the trustees appointed and acting under and by virtue and in execution of an act of parliament passed in the — year of the reign of his late Majesty King William the Fourth, intituled "An Act, &c. [*here set out the title of the local act*], to inquire into and ascertain the value of the said piece of land, and the recompense to which you, the said A. B., as the owner of, or person interested in the said land, and the said C. D., as the tenant thereof, may be entitled, and the damage and loss which may be sustained by you, the said A. B., and the said C. D. respectively, in consequence of the said trustees requiring and taking the said piece of land, for the purpose of occupying the said road from — to — aforesaid; and that the said jury will then and there inquire into and ascertain such value, damage, and recompense, pursuant to the statutes in such case made and provided, and according to the notice you have already received: And you are hereby required to attend before the said trustees and jury at the time and place, and on the occasion above mentioned, and to produce and show before them the title deeds of and relating to the said piece of land, and to prove your title thereto and your interest therein, and also to produce the counterpart of any lease of, or any agreement by you

for letting the said piece of land, and all other papers and documents relating to or in anywise concerning the same. Dated this — day of —, 1843.

G. H., clerk to the said trustees.

11. *The like Notice to the Tenant.*

To C. D., of —.

Whereas you, the said C. D., are the tenant or occupier of a certain piece of land, &c. [*describing it as in the first notice*], of which piece of land A. B., of —, is the owner or person interested therein: Now you are hereby required to take notice, &c. [*as in the last form to the words "according to the notice you have already received"*]: And you are hereby required to attend before the said trustees and jury, at the time and place and upon the occasion aforesaid, and to produce before them the lease or agreement in writing, if any, under which you hold the said piece of land, and all receipts for rent paid by you for the said piece of land, and all other papers and documents relating to or in any wise concerning the same. Dated, &c.

12. *Summons to Witnesses to appear before the Jury.*

To G. H. and J. K.

You, and each of you, are hereby summoned and commanded to be and appear before three or more of the trustees appointed and acting under and by virtue and in execution of an act of parliament passed in the — year of the reign of King William the Fourth, intituled, "An Act &c." [*set out the title of the local act*], at the house of —, known by the sign of the — at — in the county of —, at ten o'clock in the forenoon of the — day of — instant, to be examined and give evidence on oath before a jury, to be then and there chosen and sworn before the said trustees, pursuant to the statutes in such case made and provided, to inquire into and ascertain the value of a certain piece of land, situate and being &c., [*here describe the land as in the first notice*], and also to inquire into and ascertain the recompense which the said A. B., as the owner of and person interested in the said piece of land, and the said C. D., as the tenant of the said land, may respectively be entitled unto, and the damage and loss which may be sustained by them respectively, by reason of the said trustees taking the said piece of land for the purpose of improving the said road from — aforesaid to — in the county aforesaid. Herein fail not, under the penalty imposed by the statute in that behalf. Dated this — day of — 1843.

13. *Inquisition and finding of the Jury.*

— } An inquisition taken at the house of —, known by the name or sign of
to wit, } the —, at — in the county of —, this — day of — in the year of
our Lord 1843. and in the seventh year of the reign of our sovereign lady Victoria, by the
grace of God, of the united kingdom of Great Britain and Ireland Queen, defender of
the faith, by virtue of the warrant or precept hereunto annexed, under the hands and
seals of —, being — of the trustees appointed and acting under and by virtue and
in execution of an act of parliament passed in the — year of the reign of King William
the Fourth, intituled "An Act, &c." [*set out the title of the local act*], before — and
— of the trustees appointed and acting under and by virtue and in execution of the said
act, and of other statutes in such case made and provided, upon the oaths of — and

—, twelve indifferent men of the said county; qualified to serve upon juries; who being duly summoned and returned, and sworn to inquire into and ascertain the value of a certain piece of land in the said warrant mentioned, situate &c., [*describe the land correctly as in the first notice*], and also to inquire into and ascertain the recompense to which the said A. B. in the said warrant named as the owner and person interested in the said piece of land, and the said C. D. therein named as the tenant and occupier thereof, may respectively be entitled for the damage and loss sustained, or which may be sustained by them respectively, in consequence of the said trustees requiring and taking the said piece of land for the purpose of improving the said road from — aforesaid to — in the county aforesaid, according to the requisition of a certain notice duly given by the said trustees to the said A. B. and C. D., to contract with the said trustees for the purchase by them of the said piece of land, upon their oath find, after view had and evidence heard, that the value of the said piece of land so required by the said trustees for the purposes aforesaid, and the recompense to the said A. B. as the owner of, or person interested in the said land, for the damage and loss which he has sustained, or may sustain, by reason of the said trustees requiring and taking such piece of land as aforesaid, amounts to the sum of £—; and that by reason also of the said trustees requiring and taking the said piece of land as aforesaid, the said C. D., as the tenant and occupier of the same, will sustain damage and loss to the amount of £—. In witness whereof as well the said — [*the trustees*], as the jurors aforesaid, have hereunto respectively set their hands and seals on the day and year first above written.

14. *Order of Trustees for stopping up an old Road, and giving it in Exchange to the Owner of Land given up by him for the new Road, under 3 Geo. 4, c. 126, s. 86 (g).*

We whose names are hereunto subscribed, being — of the trustees appointed by and acting in the execution of a certain act intituled “An Act, &c.” [*set forth the title of the local act*], do hereby order, that so much of the old turnpike road leading from — to —, as lies between the points at which the same touches the new line of turnpike road lately formed at or near —, commencing from — and extending to —, and containing in length by admeasurement — rods, be the same more or less, and situate in the parish of — aforesaid, shall be stopped up, and wholly discontinued to be used as a public highway, the same having in our judgment become useless and unnecessary; and that the said old turnpike road so ordered to be stopped up shall be delivered up to and become the sole and absolute property of A. B. of — aforesaid, pursuant to our agreement in that behalf with the said A. B., and in exchange for the land given up by him, and intended to be forthwith conveyed to the said trustees, and now formed into and constituting the new road as aforesaid; and to be henceforth used as and for a turnpike road, containing in length by admeasurement — rods or thereabouts, and in width (on an average) —, or thereabouts, situate in the said parish of —.

15. *Agreement between the Trustees of a Turnpike Road, and a person liable by Tenure to repair some part of it (h), under 3 Geo. 4, c. 126, s. 106.*

At a meeting of the trustees of the turnpike roads, under an act passed in the —

(g) See *ante*, p. 1338, and *Allnut v. Price*, 1 B. & Ad. 302.

(h) See *ante* p. 1345. The above form is given by the statute.

year of the reign of King George the ——. “For” [*state the principal part of the title of the local act*], held at — the — day of —.

Whereas A. B. of — is liable by tenure &c., [*as the case shall be*], to the repair of a certain highway leading between — and —, of the length of — yards, or thereabouts, and the said highway, being now made turnpike road by virtue of the said act, will occasion a greater expense to make and keep the same in proper repair than would have been necessary if no such act had been obtained, and the said A. B. attending this meeting in person [or “by C. D. his attorney [‘or agent’], authorized to treat in his behalf,”] the said trustees and the said A. B., in pursuance of a power given by an act passed in the third year of the reign of King George the Fourth for regulating turnpike roads, have, in order to put and keep the said road in proper condition and repair, come to the following agreement, viz. ; That the said trustees shall on or before the — day of — next pay and allow the sum of £— out of the tolls arising upon the said turnpike road, towards putting the said road into proper repair, to be laid out and expended by the surveyor of the said turnpike road ; and that the said A. B. shall advance and pay into the hands of the treasurer of the said turnpike road, on or before the — day of — next, the sum of £—, to be also laid out and expended by the said surveyor in the repair of the said road ; and that from and after the — day of — next, the said turnpike road shall be kept in repair by the said trustees out of the said tolls as aforesaid, so long as the said turnpike act shall continue, upon the said A. B. paying into the hands of their treasurer the sum of £— upon the — day of — in every year, which the said A. B. doth hereby for himself and his heirs agree to pay accordingly, so long as the said road shall be so repaired by the said trustees as aforesaid.

[Or, if it shall be agreed that A. B. shall keep the road in repair, upon having an annual allowance in money from the trustees, let the agreement be varied and adapted to the case.]

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16. Notice of Surveyor to the Occupier of inclosed Land, to shew cause why Materials should not be got therefrom for repairing the Road, under the 3 Geo. 4, c. 126, s. 97, 98 (i).

To A. B. of —

Take notice, that you are hereby required to appear before J. P. and W. P. esquires, two of her majesty’s justices of the peace acting in and for the county of — at — in the said county, on — the — day of — next, to shew cause why materials for repairing the turnpike road leading from — to — in the county aforesaid, should not be had and taken from and out of certain inclosed land situate at — in the county aforesaid, of which you are the occupiers, according to the directions of an act of parliament passed in the third year of the reign of his late majesty King George the Fourth for regulating the turnpike roads. Dated this — day of — 1843.

A. B. Surveyor of the said turnpike road.

(i) See ante, p. 1341.

17. *Order of two Justices to get Materials out of inclosed Lands.*

County of } Whereas it hath been made to appear unto us, J. P. and W. P.,
 ———, } esquires, two of her Majesty's justices of the peace acting in and for the
 said county, upon the oath of A. B., surveyor of the turnpike road from — to —
 in the county aforesaid, and other proof upon oath, that notice in writing, signed by
 the said surveyor, hath been duly left at the usual place of abode of C. D., the occu-
 pier of certain inclosed land situate in the parish of — in the county aforesaid,
 within which parish a certain part of the said turnpike road is situate, to appear before
 us to show cause why materials for repairing the said turnpike road should not be had
 and taken out of and from the said inclosed land, according to the directions of an act
 passed in the third year of the reign of his late Majesty King George the Fourth for
 regulating turnpike roads: And whereas the said C. D. hath this day attended before
 us, pursuant to such notice, but hath not shown sufficient cause to the contrary: And
 whereas it appears to us, upon the oath of the said A. B., that the said inclosed land
 is not any part of a garden, yard, park, paddock, planted walk, or avenue to any
 house, or of ground planted and set apart as a nursery for trees: We do therefore,
 after hearing what has been alleged by the said A. B. and C. D., and duly considering
 the premises, hereby order and authorize the said A. B., as such surveyor as aforesaid,
 to dig, get, gather, take, and carry away such materials for the purpose aforesaid out of
 and from the said inclosed land at any time or times between the — day of —
 and the — day of —, according to the directions and subject to the restrictions of
 the said act. Given under our hands and seals the — day of —, in the year of
 our Lord 1843.

18. *Order of Trustees for erecting a Weighing Engine, under 3 Geo. 4, c. 126, s. 21 (i).*

At a meeting of the trustees of the turnpike roads, under an act passed in the — year of the reign of his Majesty King George the —, "For" [*state the title of the local act*], held at —, the — day of —.

In pursuance of the powers given to us by an act passed in the third year of the reign of his Majesty King George the Fourth, for regulating turnpike roads, we do hereby order that an engine, proper for the weighing of carriages of the constructions and weights specified in the said act, be forthwith erected at, or as near as conveniently may be to, the toll-gate or bar now erected upon the said turnpike road at —; and that A. B., the surveyor [or "treasurer," or "clerk"] of the said turnpike road, do contract with some proper person [or "with C. D.," in case the trustees shall think fit to name the person] for making and erecting such engine, and do inspect and take care that the same is properly done; and we do order the gatekeeper at the said gate or bar for the time being, to attend the said weighing engine, and carefully to weigh all carriages passing loaded upon the said road, at the place where such engine shall be erected, together with the loading thereof, and to take the several additional tolls or rates for overweight, and give tickets of the weight of such carriages and loading, when required by the driver thereof, and also to enter into a separate book, to be kept by him for that purpose, an account of every carriage so weighed, which shall with the loading exceed the weights allowed by the said act, and account to us for the money received for all such overweight.

(i) See *ante*, p. 1357. The above form is given by the act.

19. *Table of Weights allowed in Winter and Summer to Carriages directed to be weighed (including the Carriage and Loading) by the Act of the 4 Geo. 4, c. 95 (j).*

	Summer.		Winter.	
	Tons.	Cwts.	Tons.	Cwts.
To every waggon with nine inch wheels	6	10	6	—
To every cart with nine inch wheels	3	10	3	—
To every waggon with six inch wheels	4	10	4	—
To every cart with six inch wheels	3	—	2	15
To every waggon with wheels of the breadth of four and a half inches	4	5	3	15
To every cart with wheels of the breadth of four and a half inches	2	12	2	7
To every waggon with wheels of less than four and a half inches	3	15	3	5
To every cart with wheels of less than four and a half inches	1	15	1	10

20. *Agreement between Trustees of different Turnpike Roads for erecting one Weighing Engine for the joint use of such Roads, under 3 Geo. 4, c. 126, s. 25 (k).*

At a meeting of the trustees of the turnpike roads, under an act passed in the — year of the reign of King George the — [state the principal part of the title of the act], and also of the trustees of the turnpike roads, under an act passed in the — year of the reign of King George the —, “For” [§c. as above], held at —, the — day of —, for the purpose of agreeing upon and ordering a weighing engine at the joint expense of the said trustees, for the use of the said several turnpike roads, pursuant to the powers given by an act passed in the third year of the reign of King George the Fourth, for regulating turnpike roads.

It appearing to us that a weighing engine may be erected at — [describing the spot where it can be most conveniently placed], which will accommodate both the said turnpike roads, according to the true intent and meaning of the said act: We do therefore order, &c. [as in the above form, No. 18], and we do hereby agree and order that the expenses of making and erecting the said weighing engine, and the sum of —, which we do hereby agree and order shall be paid to the toll gatherer attending the said toll-gate for the time being, weekly, for his extraordinary trouble in attending the said weighing engine, shall be advanced and paid by the treasurers of the said several turnpike roads, in the shares and proportions following; viz. that the treasurer of the — road shall pay [“one half,” “two third,” or “three fourth”] parts thereof [as the trustees shall agree], and the treasurer of the — road shall pay the remaining [“one half,” “one third,” or “one fourth”] part thereof; and that the money to be received at the said weighing engine by forfeiture for overweight shall be paid to the said respective treasurers in the like proportions, and be applied by them for the use of the said several turnpike roads.

(Signed.)

(j) This table is given in the Schedule No. I. of the 4 Geo. 4, c. 95, in the room of that given in the Schedule No. II. of 3 Geo. 4, c. 126, in which last there was a

great inaccuracy. And see *ante*, p. 1354.

(k) The above form is given by the act. And see *ante*, p. 1357.

21. *Notice of a Meeting of Trustees for ordering a Side Gate to be erected, under 9 Geo. 4, c. 77, s. 5 (l).*

Notice is hereby given, that the trustees of the turnpike road, under an act passed in the — year of the reign of King George the —, "For" [*state the material parts of the title of the local act*], will meet at the house of — at —, on the — day of — next, at the hour of — in the — noon, in order to consult about erecting a toll-gate on the side of the said turnpike road, at or near a place called —, across a certain highway there, leading to —. Dated the — day of —.

A. B., clerk to the said trustees.

22. *Order of the Trustees for erecting a Side Gate (m).*

At a meeting of the trustees of the turnpike road, under an act passed in the — year of the reign of King George the —, "For" [*here state the material parts of the title of the local act*], being assembled this — day of —, to enforce the directions of two acts passed respectively in the third and ninth years of the reign of King George the Fourth for regulating turnpike roads, as far as the same respects the erecting of side gates.

In pursuance of public notice given in writing upon all the toll-gates erected on the said road, and also in the — newspapers circulated in this part of the country for fourteen days now last past, we do order that a toll-gate shall be erected on the side of the said turnpike road, at or near a place called — across a certain highway there, leading to —, and that the following toll be taken at the said gate, *videlicet* [*here insert the particular tolls to be taken at the gate*].

23. *Notice for letting Tolls (n), under 3 Geo. 4, c. 126, s. 55.*

Notice is hereby given, that the tolls arising at the toll-gate [*or "toll-gates," if more than one*] upon the turnpike road at —, called or known by the name of the — gate, will be let by auction to the best bidder, at the house of — at —, on the — day of — next, between the hours of — and — in the — noon, in the manner directed by the act passed in the third year of the reign of King George the Fourth for regulating turnpike roads, which tolls produced the last year the sum of £— above the expenses of collecting them, and will be put up at that sum; whoever happens to be the best bidder must, at the same time, pay one month in advance (if required) of the rent at which such tolls may be let, and give security, with sufficient sureties, to the satisfaction of the trustees of the said turnpike road, for payment of the rest of the money monthly [*or in such other proportions as shall be directed*].

A. B., clerk to the trustees of the said turnpike road.

24. *Order of Trustees for reducing the Tolls (o), under 3 Geo. 4, c. 126, s. 43.*

At a meeting of the trustees of the turnpike roads, under an act passed in the — year of the reign of King George the —, "For," &c. [*state the principal part of the title of the local act*], held at — the — day of —.

(l) See *ante*, p. 1363. The above form is given by the 3 Geo. 4, c. 126.

(m) This form is also given by the 3 Geo. 4, c. 126.

(n) This form is given by 3 Geo. 4, c. 126. See *ante*, p. 1365.

(o) This form is given by the 3 Geo. 4, c. 126. See *ante*, p. 1349.

We, whose names are hereunto subscribed, being — of the trustees acting under the said act, and being now assembled for reducing the tolls authorized to be taken by and under the said act, pursuant to public notice given for that purpose in the — newspapers circulated in this part of the country, and also affixed upon all the turnpike gates erected upon the said turnpike road, for upwards of one calendar month now last past, and having the consent of the several persons entitled to five-sixth parts of the money now remaining due upon the credit of the said tolls, this day signified and proved to us, do hereby order that the tolls granted by the said act shall from and after the — day of — be lessened and reduced in the following manner [*here state the several reductions proposed to be made*].

25. *Warrant from a Justice to enter the Toll-Gate House, and remove the persons therein, under 4 Geo. 4, c. 95, s. 59 (p).*

County of —, } To the constable [*or* “headborough” or “tithingman”] of —.
to wit. } in the said county.

Whereas complaint hath been made unto me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, upon the oath of —, and other evidence now produced to me, that C. D., who now inhabits the turnpike or toll-gate house at —, upon the turnpike road leading from — to —, and was appointed to collect the tolls there, hath been duly discharged by the trustees of the said turnpike road from any further collecting or receiving the tolls arising at the said gate, and hath refused, and still doth refuse, to quit the possession of the said house: and the said C. D. having been summoned to appear before me this day, to shew cause why he should not be removed from the said house, and having shewn no sufficient cause for that purpose [*or* “not having appeared”] I do hereby authorize and require you, with such assistance as shall be necessary, to enter into the said toll-house or turnpike house, and the buildings belonging thereto, in the day time, and to remove the said C. D. and all such persons as shall be found therein, together with his and their goods, out of such house and buildings, and to put E. F., the person lately appointed by the trustees to collect such tolls, into the possession thereof; for which this shall be your sufficient warrant. Given under my hand and seal this — day of —, &c.

26. *Conviction of a Toll-Collector for taking excessive Toll, under 3 Geo. 4, c. 126, s. 55, and 4 Geo. 4, c. 95, s. 30 (q).*

County of —, } Be it remembered that on the — day of —, in the year of
to wit. } our Lord 1843, A. B. is convicted before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, for that he the said A. B., on the — day of —, in the year aforesaid, at — in the said county, being then and there the collector of the tolls at a certain gate called the — toll-gate, upon a certain turnpike road leading from — to —, did demand and take from one C. D. the sum of —, as and for the toll for two horses which the said C. D. was then and there driving, for passing through the said gate, the same being a greater toll than what was then authorized and directed in that behalf by a certain statute made and passed in the — year of the reign of King —, intituled, “An Act,” &c. [*here set forth the title*]

(p) See *ante*, p. 1368. The above form is given by 3 Geo. 4, c. 126.

(q) See *ante*, p. 1333, 1366. The above

concise form of conviction is given by 3 Geo. 4, c. 126.

of the local turnpike act under which the toll was payable] and contrary to the form of the several statutes made in the third and fourth years of the reign of King George the Fourth for regulating turnpike roads, which have imposed a forfeiture not exceeding 5*l.* for the said offence ; I do therefore adjudge and order the said A. B. to pay the sum of 3*l.*, as a penalty for his said offence. Given under my hand and seal the day and year first above written.

27. *Conviction of a Collector for not putting up his Name on the Toll-House, under 4 Geo. 4, c. 95, s. 30 (r).*

County of —, } Be it remembered, &c. [as in the last form] that C. D. of &c.,
to wit } on &c., at —, in the said county, being then and there the collector of the tolls at a certain gate called the — toll-gate, in and upon a certain turnpike road leading from — to —, did not place, or cause to be placed, on the front of the said toll-house at which the said C. D. was then stationed, his Christian name and surname, painted in black on a board with a white ground, but wholly omitted so to do ; contrary to the several statutes made and now in force for regulating turnpike roads. And I do hereby declare and adjudge that the said A. B. hath forfeited, and do forthwith pay the sum of £ —, as a penalty for his said offence. Given, &c.

28. *Conviction of a Driver, for obstructing the Weighing of a Cart, under 3 Geo. 4, c. 126, s. 22 (s).*

County of —, } Be it remembered, &c. [as before] that A. B. of, &c., on, ~~the~~ ^{at} ~~the~~ ^{the} ~~day~~ ^{day} ~~of~~ ^{of} ~~the~~ ^{the} ~~year~~ ^{year} ~~aforesaid~~ ^{aforesaid},
to wit. } &c., being then and there the driver of a certain waggon, did ~~there~~ ^{there} refuse to allow the same to be weighed, and did then and there resist one C. D., a toll collector, in weighing the same ; contrary to the statute made in the third year of the reign of King George the Fourth for regulating turnpike roads. And I do hereby declare and adjudge, &c. [as before].

29. *Conviction for evading the Payment of Toll, under the 3 Geo. 4, c. 126, s. 41 (t).*

County of —, } Be it remembered, &c. [as before] for that he the said A. B., on
to wit. } the — day of —, in the year aforesaid, at —, in the said county, did with a certain horse, which the said A. B. was then and there riding, go off and pass from a certain turnpike road leading from — to — in the said county, through and over certain land near and adjoining to the said road, not being a public highway, and he the said A. B., not being the owner or occupier of such land, with intent to evade the payment of the toll of one penny, in respect of the said horse, granted by a certain act of parliament, made and passed in the — year of the reign of King —, intituled, " An Act," &c. [here set forth the title of the local turnpike act, under which the toll was payable ;] by reason whereof the payment of the said toll of one penny was unlawfully and wilfully avoided by the said A. B., contrary to the statute made in the third year of the reign of King George the Fourth for regulating turnpike roads. And I do hereby declare and adjudge that the said A. B. hath forfeited for the said offence the sum of 5*l.* Given under my hand and seal the day and year first above written.

(r) See ante, p. 1333.

(s) See ante, p. 1358.

(t) See ante, p. 1352.

30. *Information against a Person for riding on the Footpath, under 3 Geo. 4, c. 126, s. 121 (u).*

County of —, } Be it remembered, that on the — day of — in the year of
to wit. } our Lord 1843, at — in the county aforesaid, A. B. of — in
the said county, gentleman, informed me, J. P., esquire, one of her Majesty's justices
of the peace in and for the said county that C. D., of, &c., esquire, on the — day
of — instant, at — aforesaid, did unlawfully and wilfully ride upon a certain foot-
path and causeway by the side of a certain turnpike road there situate, called the —
road, the said footpath and causeway being made and set apart for the use and accommo-
dation of foot passengers passing and travelling along the said road, contrary to the
statute made in the third year of the reign of King George the Fourth for regulating
turnpike roads, which hath imposed a forfeiture not exceeding 40s for the said
offence, over and above the damages occasioned thereby

Taken before me

31. *Conviction of a Party for not cleansing a Ditch adjoining the Road, under 3 Geo. 4, c. 126, s. 113(v)*

County of —, } Be it remembered, that on the — day of — in the year of our
to wit. } Lord 1843, A. B. of, &c., is convicted before me, J. P., esquire,
one of her Majesty's justices of the peace in and for the said county, for that he the
said A. B., being then and there a person occupying certain lands and grounds adjoining
to and lying near a certain turnpike road there situate, called the — turnpike
road, through which said lands and grounds the water hath used to pass from the said
turnpike road, did not after ten days notice to him in that behalf duly given by G. M.,
the surveyor of the said turnpike road, or at any time before the expiration of such
notice, well and sufficiently cleanse and scour the ditches, watercourses, and drains for
such water to pass, without obstruction, contrary to the form of the statute made in
the third year of the reign of King George the Fourth for regulating turnpike roads.
And I do hereby declare and adjudge, &c. [as in form 27]

32. *Order of a Justice to cut down Trees overhanging the Road (x), under the 3 Geo. 4, c. 126, s. 116.*

County of } Whereas complaint hath been made unto me, J. P. esquire, one of her
— } Majesty's justices of the peace in and for the county of —, acting
within the hundred of —, upon the oath of A. B., surveyor of the turnpike road
[describing it], that C. D. of —, hath had due notice from him the said surveyor to
cut down, prune, or lop the branches of certain trees growing in or near the hedges
and other fences belonging to the said C. D., as the occupier of certain land at —,
and next adjoining to the said turnpike road, in such manner that the said turnpike
road should not be prejudiced by the shade thereof, and that the sun and wind might
not be excluded from the said road, to the damage thereof, pursuant to the statute
made in the third year of the reign of his late Majesty King George the Fourth for
regulating the turnpike roads, but that he the said C. D. hath not complied with such
notice, or with the requisites of the said statute. And whereas the said C. D., having
been duly summoned to answer the said complaint, hath appeared before me pur-
suant to such summons, and it having been proved to me that the said C. D. has not

(u) See ante, p. 1376.

(v) See ante, p. 1372.

(x) See ante, p. 1374.

compiled with the requisites of the said act in that behalf, and that the said trees are not in any garden, orchard, plantation, walk or avenue to a house, and that none of the said trees is an ornament or shelter to a house; now I, the said justice, upon hearing as well the said A. B. as the said C. D., do order that the branches of the said trees growing in or near the said hedges or other fences adjacent thereto, shall forthwith be cut down, pruned, and lopped by the said C. D. in such manner that the said turnpike road shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from the said road to the damage thereof. And I do further order, that, in case the said C. D. shall not obey this order within ten days from the date hereof, then the said A. B. do cut down, prune and lop the branches of the said trees in the manner directed by this order, and according to the directions of the said act, and proceed against the said C. D. for recovery of the penalties and charges which he will thereby incur. Given under my hand and seal this — day of —, 1843.

J. P. (L. S.)

33. *Conviction for not trimming a Hedge, pursuant to a Magistrate's Order, under 3 Geo. 4, c. 126, s. 116(y).*

County of } Be it remembered, &c. [as ante, p. 1401], that C. D. of, &c. on, &c.
 —. } at, &c. being then and there the occupier of certain lands next adjoining to a certain turnpike road there situate, called The — Road, did not within ten days after the making of a certain order by me on the — day of — in that behalf, and after notice thereof to him the said C. D. duly given, cut, prune, and trim his hedges to the height of six feet from the surface of the ground (the said hedges not being in any garden, orchard, plantation, walk or avenue to a house, nor an ornament or shelter to a house), as he the said C. D. was directed and required by the said order, contrary to the statute made in the third year of the reign of his late Majesty King George the Fourth, intituled [insert the title of the act.] And I do hereby declare and adjudge, that the said C. D. hath forfeited for his said offence the sum of 12s., being at the rate of 2s. for every twenty-four feet in length of such hedge, which he the said C. D. hath so neglected to cut, trim, and prune in manner aforesaid; and that he do forthwith pay the said sum, and also the sum of — for the charges and expenses of the surveyor in pruning and trimming the said hedges. Given under my hand and seal, &c.

34. *Conviction for encroaching on the Road by a Hedge, under 3 Geo. 4, c. 126, s. 118(z).*

Be it remembered, &c. [as ante, p. 1401], that A. B. of —, in the said county, on, &c. at, &c. did make, and cause to be made, a certain hedge at the side of a certain turnpike road there situate, called The — Road, in such manner as to reduce the breadth and confine the limits thereof by the space of — feet in width of the said road, contrary to the statute made in the third year of the reign of King George the Fourth, intituled "An Act," &c. [insert the title of the act]. And I do hereby declare and adjudge, &c. [as in form 27].

35. *Conviction for laying Rubbish on a Road, under 3 Geo. 4, c. 126, s. 114(a).*

County of } Be it remembered, &c. [as ante, p. 1401.] For that the said C. D. on,
 —. } &c. at, &c. did lay and throw a large quantity of filth and rubbish upon a certain turnpike road there situate, called The — Road, which the surveyor of

(y) See ante, p. 1374.

(z) See ante, p. 1375.

(a) See ante, p. 1373.

the said turnpike road did then and there cause to be removed, after the said C. D. had neglected to remove the same for the space of twelve hours after notice in writing (signed by the surveyor of such road) had been given to the said C. D. for that purpose, the charges of which removal I the said justice have settled to amount to —; and that the said C. D., after the removal of the said annoyance, to wit, on the — day of — aforesaid, at —, in the county aforesaid, did lay and throw upon the said turnpike road a certain other large quantity of filth and rubbish; contrary to the statute made in the third year of the reign of his late Majesty King George the Fourth, intituled, &c. [*insert the title of the act.*] And I do hereby declare and adjudge, that the said C. D. hath forfeited for his said offence the sum of £—, and that he do forthwith pay that sum, together with the said sum of — for such charges as aforesaid. Given under my hand and seal, &c.

36. *Conviction for destroying a Direction-post, under 3 Geo. 4, c. 126, s. 119 (b).*

County of } Be it remembered, &c. [*as ante*, p. 1401], that C. D. of, &c. on, &c.

— at, &c. in the said county, did wilfully break, cut down, pull up, and destroy a certain direction-post, set up and placed at the crossing and turning of a certain turnpike road called The — Road, at a certain part of the said road called The Four Lane Ends, which said direction-post had been theretofore erected by the trustees of the said turnpike road, with an inscription thereon denoting to what place the turning of the said road did lead; contrary to the said statute made in the third year of the reign, &c. [*as above*]. And I do declare and adjudge, that the said C. D. hath forfeited for his said offence the sum of £— [*not exceeding £10.*] Given under my hand and seal, &c.

37. *Conviction for taking Scrapings off the Road, under 4 Geo. 4, c. 95, s. 72 (c).*

County of } Be it remembered, &c. [*as ante*, p. 1401], that C. D. of, &c. on, &c.

— at, &c. upon a certain turnpike road there situate, called The — Road, did, without being thereto authorized by the surveyor acting under the statute for making and repairing the said road, scrape, shovel up, gather, and carry away a certain large quantity, to wit, one cartload of gravel, sand, drift, and soil from off the said turnpike road; contrary to the statute made in the fourth year of the reign of his late Majesty King George the Fourth, for explaining and amending an act passed in the third year of the reign of his said late Majesty for regulating turnpike roads. And I do hereby adjudge and declare, that the said C. D. hath forfeited for his said offence the sum of 40s., to be distributed according to the directions of the said statute. Given under under my hand and seal, &c.

38. *Conviction of a Driver, for riding on a Cart, under 3 Geo. 4, c. 126, s. 132 (d).*

County of } Be it remembered, &c. [*as ante*, p. 1401], that C. D. of, &c. on, &c.

— at, &c. being then and there the driver of a certain cart drawn by two horses, did then and there ride upon the said cart in and upon a certain turnpike road there situate, called The — Road, not having then and there any other person on foot, or on horseback, to guide the said cart, and such cart not being then and there such a light cart as is usually driven with reins and conducted by some person holding the reins of the horse or horses drawing the same; contrary to the statute made in the

(b) See *ante*, p. 1345.

(c) See *ante*, p. 1378.

(d) See *ante*, p. 1381.

third year of the reign of his late Majesty King George the Fourth, intituled, &c. And I do hereby declare and adjudge, &c. [as before, the penalty being not exceeding 40s. on the driver, but £5 if he is the owner.]

39. *Conviction of a Driver for not using Skidpans, under 3 Geo. 4, c. 126, s. 126 (d).*
 County of } Be it remembered, &c. [as ante, p. 1401], that before and at the time
 —. } of the committing of the offence hereinafter mentioned, a certain order
 had been duly made by the trustees of a certain turnpike road, called The — Road,
 a copy of which said order had been duly affixed on all the turnpikes standing on such
 road, for thirty days and upwards, before the committing of the offence hereinafter men-
 tioned, by which said order it was directed, that in all cases where any waggon or cart
 should descend any hill or hills on the said road, with either of the wheels locked, a
 skidpan or slipper should be used or placed at the bottom of such wheel during the
 whole time of its being so locked, in such manner as to prevent the said road from
 being destroyed or injured by the locking of such wheel; and that afterwards, and
 whilst the said order was so in force as aforesaid, to wit, on the — day of —, in
 the year aforesaid, at the parish aforesaid, in the county aforesaid, C. D. of —, in
 the said county of —, did then and there drive, and act as the driver of, a certain
 waggon down a certain hill upon the said turnpike road, with one of the wheels of the
 said waggon locked, without using or having such skidpan or slipper at the bottom of
 such wheel, as by the said order was directed as aforesaid; contrary to the statute
 made in the third year of the reign of his late Majesty King George the Fourth, intituled,
 &c. And I do hereby adjudge, &c. [as before, the penalty being not exceeding 20s.]

40. *Conviction of the Owner of a Cart for not having his Name painted thereon, under 4 Geo. 4, c. 95, s. 15 (e).*

County of } Be it remembered, &c. [as ante, p. 1401], that C. D. of, &c. on, &c.
 —. } at, &c. did use, and allow to be used, a certain cart of him the said C. D.
 upon a certain turnpike road there situate, called The — Road, without his christian
 and surname and the place of his abode being painted, in one or more straight line or
 lines, upon any conspicuous part of the right or off side of the cart, or upon the off side
 shaft thereof, at full length, in large legible letters not less than one inch in height;
 contrary to the statute made in the fourth year of the reign of his late Majesty King
 George the Fourth, for explaining and amending an act passed in the third year of the
 reign of his said late Majesty for regulating turnpike roads. And I do hereby declare
 and adjudge, &c. [as before, the penalty being not exceeding £5.]

41. *General Form of a Summons for any Person to attend a Justice (f).*

County of —, }
 to wit. } To A. B. of —.

Whereas complaint and information have been made before me, C. D. esquire, one
 of her Majesty's justices of the peace in and for the said county, by E. F. of —,
 that, &c. [here state the nature and circumstances of the case, as far as it shall be

(d) See ante, p. 1380.

(e) See ante, p. 1381, note.

(f) This and the following forms are
 expressly given by the 3 Geo. 4, c. 126.

necessary to show the offence, and to bring it within the authority of the justice, and in doing that, follow the words of the act as near as may be]: These are therefore to require you personally to appear before me [or "the justices to be assembled at their special sessions to be holden"] at —, in the said county, on the — day of — next, at the hour of — in the — noon, to answer to the said complaint and information made by the said E. F., who is likewise directed to be then and there present to make good the same. Herein fail not. Given under my hand, this — day of —.

42. General Form of an Information.

County of —, } Be it remembered, that on the — day of —, A. B. of —,
to wit. } in the said county, informeth me, —, one of her Majesty's justices of the peace in and for the said county, that —, of —, in the said county [here describe the offence, with the time and place, and follow the words of the act as near as may be]; contrary to the statute made in the third year of the reign of King George the Fourth for regulating turnpike roads, which hath imposed a forfeiture of — for the said offence.

A. B.

Taken the — day of —, before me, —.

43. General Form of a Conviction.

County of —, } Be it remembered, that on the — day of —, in the —
to wit. } year of the reign of —, and in the year of our Lord —, A. B. is convicted before me, —, one of her Majesty's justices of the peace in and for the said county, for [here specify the offence, and when and where committed]; contrary to the form of the statute made in the — year of the reign of —, intituled [here set forth the title of the act]; and I do hereby declare and adjudge, that the said A. B. hath forfeited for his said offence the sum of — [or "shall be committed, to — for the space of —," as the case may be.] Given under my hand and seal the day and year first above written.

C. D. (L. S.)

44. General Form of a Warrant to distrain for a Forfeiture(g).

County of —, } To the constable [or "headborough," or "tithingman"] of —.
to wit. }

Whereas A. B. of —, in the said county, is this day convicted before me, C. D. esquire, one of her Majesty's justices of the peace in and for the said county, upon the oath of G. H. a credible witness, for that the said A. B. hath [here set forth the offence, describing it particularly in the words of the statute as near as may be]; contrary to the statute in that case made and provided; by reason whereof the said A. B. hath forfeited the sum of £—, to be distributed as herein is mentioned, which he hath refused to pay: These are therefore, in her Majesty's name, to command you to levy the said sum of £—, by distress of the goods and chattels of him the said A. B.; and if within the space of four days next after such distress by you taken, the said sum, together with the reasonable charges of taking and keeping the same, shall not

be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay one-half of the said sum of £—— to E. F. of ——, who informed me of the said offence, and the other half of the said sum of £—— to J. K. the surveyor of the turnpike road [*describing it*] where the said offence ["neglect," or "default"] happened, to be employed towards the repair of the said road, returning the overplus on demand to him the said A. B. (the reasonable charges of taking, keeping and selling the said distress being first deducted), and if sufficient distress cannot be found of the goods and chattels of the said A. B. whereon to levy the said sum of £——, that then you certify the same to me together with this warrant Given under my hand and seal the —— day of ——.

C. D. (L. S.)

45. *Return of Constable upon the above Warrant of Distress, where there are no Effects.*

I, A. B., constable of the parish of ——, in the county of ——, do hereby certify and make oath, that by virtue of this warrant, I have made diligent search for the goods of the within named ——, and that I can find no sufficient goods whereon to levy the within sum of £——. As witness my hand, the —— day of ——.

Sworn before me, the day and year, &c

A. B.

C. D

46. *General Form of Commitment for want of Distress (h).*

County of ——, { To the constable of ——, in the said county, and to the keeper
to wit. { of the common gaol [or "the house of correction"] at ——, in the
said county.

Whereas A. B. of ——, in the said county, was on the —— day of —— convicted before me, C. D. esquire, one of her Majesty's justices of the peace in and for the said county, upon the oath of L. F. a credible witness, for that he the said A. B. [*here set forth the offence*], contrary to the statute made in the third year of the reign of his late Majesty King George the Fourth for regulating turnpike roads, by reason whereof the said A. B. hath forfeited the sum of —— And whereas, on the —— day of ——, in the year aforesaid, I did issue my warrant to the constable of ——, to levy the said sum of £—— by distress and sale of the goods and chattels of him the said A. B., and to distribute the same according to the directions of the said statute And whereas it duly appears to me, upon the oath of the said constable, that the said constable hath used his best endeavours to levy the said sum on the goods and chattels of the said A. B. as aforesaid, but that no sufficient distress can be had whereon to levy the same These are therefore to command you, the said constable of —— aforesaid, to apprehend the said A. B., and him safely to convey to the common gaol [or "house of correction"] at ——, in the said county, and there deliver him to the keeper thereof, together with this precept And I do also command you, the said keeper, to receive and keep in your custody the said A. B. for the space of three months, unless the said sum shall be sooner paid, pursuant to the said conviction and warrant, and for so doing this shall be your sufficient warrant. Given under my hand and seal, the —— day of ——, in the year of our Lord ——.

C. D.

47. *Notice of Appeal to Quarter Sessions (i).*

A. B. take notice, that I intend to appeal to the next general quarter sessions of the peace to be holden for the county of —, against an order [or “conviction” or other proceeding, as the case may be, particularly specifying the purport of such order, &c., and assigning the grievance and cause of complaint.] Dated the — day of —.

C. D.

Unlawful Assembly—See Combinations, Disorderly House,
Military Training, Oaths, Riot.

Vaccination.

BY 3 & 4 Vict. c. 29, to extend the practice of vaccination, it is enacted by *sect. 8*, that any person who shall produce, or attempt to produce, by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article or thing impregnated with variolous matter, or wilfully by any other means whatsoever produce the disease of small pox in any person in England, Wales, or Ireland, shall be liable to be proceeded against and convicted summarily before any *two* justices of the peace in *petty sessions* assembled, and for every such offence shall, upon conviction, be imprisoned in the common gaol or house of correction for any term not exceeding one month.

By 4 Vict. c. 32, s. 1, the expenses of vaccination incurred by the guardians or overseers of any parish or union are chargeable on the poor rate; and by *sect. 2*, vaccination is declared not to be parochial relief.

Vagrants.

BY the 5 Geo. 4, c. 83, the former laws relating to vagrants were repealed, and new provisions made respecting them.

Idle and disorderly Persons.—By *sect. 3*, every person being able, wholly or in part, to maintain himself or his family by work or other means, and wilfully refusing or neglecting so to do, by which refusal or neglect he, or any of his family whom he may be legally bound to maintain, shall have become chargeable to any parish, township or place;

Every person returning to and becoming chargeable in any parish, township, or place from whence he shall have been

(i) See *ante*, p. 1384.

legally removed by order of two justices of the peace, unless he shall produce a certificate of the churchwardens and overseers of some other parish, township, or place, thereby acknowledging him to be settled in such other parish, township, or place;

Every petty chapman, or pedler, wandering abroad and trading without being duly licensed, or otherwise authorized by law;

Every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner;

And every person wandering abroad, or placing himself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child so to do;

Shall be deemed an *idle and disorderly person*; and any justice may commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence upon oath of one credible witness) to the house of correction to hard labour *not exceeding one calendar month*.

A man is not liable to the penalty under the above section for refusing to maintain his wife, if she has left him and committed adultery, notwithstanding he himself may have been guilty of adultery since her departure (*k*). A party, returning after an order of removal to the place from which he was removed, is not within the above enactment, unless he becomes *actually chargeable* after his return to the parish (*l*); and the commitment must specify the place to which the party returns (*m*). Every commitment must also state that the defendant had been *convicted of the offence*, and not merely that he had been *charged* (*n*); and it must be for a precise definite time, to be specified in the warrant (*o*).

Exemptions as to begging alms.—By sect. 15, nothing is to prevent any visiting justice of any prison from granting a certificate, or other instrument, for enabling any person discharged therefrom to have or receive alms or relief in or upon his route to his place of settlement; provided that such certificate be made and drawn up in compliance with the directions of any acts of parliament for the better regulation

(*k*) *R. v. Flinton*, 1 B. & Ad. 227.

(*l*) *R. v. Fillongley*, 2 F. R. 709.

Mann v. Davers, 3 B. & Ald. 103.

(*m*) *R. v. Cole*, 2 Nol. P. L. 255, 258.

(*n*) *R. v. Rhodes*, 4 T. R. 220; *R. v.*

Hooper, 6 T. R. 225.

(*o*) *Baldwin v. Blackmore*, 1 Burr.

596.

and management of gaols or prisons. If any person, however, to whom such certificate is delivered, shall act in any manner contrary to the directions of such certificate, or shall loiter upon his route, or shall deviate therefrom, then such person shall be deemed a *rogue and vagabond*, within the provisions of the act, and shall be punished accordingly.

And by *sect. 16*, no justice, mayor, or other magistrate, shall grant to any person, (other than a person entitled thereto under the 43 Geo. 3, c. 61, for the relief of soldiers, sailors and marines, and of the wives of soldiers in the cases therein mentioned,) any certificate or other instrument enabling such person to ask alms or relief in their route to any place, or for any other purpose whatever; and every person, asking alms or relief under and by virtue of any certificate or other instrument thus prohibited, is liable to be declared an *idle and disorderly* person, in like manner as if he or she had possessed no such certificate.

Rogues and vagabonds.—By *sect. 4*, every person committing any of the offences before mentioned, after having been convicted as an idle and disorderly person ;

And every person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of his majesty's subjects;

Every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, not having any visible means of subsistence, and not giving a good account of himself;

Every person wilfully exposing to view in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition;

Every person wilfully, openly, lewdly and obscenely, exposing his person in any street, road, public highway, or in the view thereof, or in any place of public resort, with intent to insult any female ;

Every person wandering abroad, and endeavouring by the exposure of wounds or deformities to obtain or gather alms;

Every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence ;

Every person running away and leaving his wife, or his child or children chargeable, or whereby any of them shall become chargeable, to any parish, township or place;

Every person playing or betting in any street, road, highway, or other open and public place, at or with any table or instrument of gaming, at any game or pretended game of chance ;

Every person having in his custody or possession any pick-lock key, crow, jack, bit, or any other implement, with intent feloniously to break into any dwelling house, warehouse, coach-house, stable, or out-building, or being armed with any gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, or having upon him any instrument, with intent to commit any felonious act ;

• Every person being found in or upon any dwelling house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose ;

Every suspected person or reputed thief, frequenting any river, canal, or navigable stream, dock, or bason, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony ;

And every person apprehended as an idle and disorderly person, and violently resisting any constable or other peace officer so apprehending him, and being subsequently convicted of the offence for which he shall have been so apprehended ;

Shall be deemed a *rogue and vagabond* ; and any justice may commit such offender, being thereof convicted before him by the evidence on oath of one credible witness, to the house of correction to hard labour *not exceeding three calendar months*. And every such picklock key, crow, jack, bit, and other implement, and every such gun, pistol, hanger, cutlass, bludgeon, or other offensive weapon, and every such instrument as aforesaid, shall, by the conviction of the offender, become forfeited to the crown.

The commitment of a party under this last section, for running away and leaving his wife or children, must state expressly that the wife or children were chargeable (*p*) ; and a commitment, for having

in his possession implements with intent to break into a dwelling house, must state that the implements, or some of them, were found on the prisoner at the time of his apprehension (*q*). A commitment for gaming must likewise state, that the party played or betted in some street, road, or other public place (*r*).

Incorrigible rogues.]—By *sect. 5*, every person breaking or escaping out of any place of legal confinement, before the expiration of the term for which he shall have been committed, or ordered to be confined, by virtue of the act;

Every person committing any offence against the act, which shall subject him to be dealt with as a rogue and vagabond, such person having been at some former time adjudged so to be, and duly convicted thereof;

And every person convicted as a rogue and vagabond, and violently resisting any constable or other peace officer so apprehending him, and being subsequently convicted of the offence for which he shall have been so apprehended;

Shall be deemed an *incorrigible rogue*; and any justice may commit such offender, being thereof convicted before him on the oath of one credible witness, to the house of correction, until the next quarter sessions, to be kept to hard labour. And by *sect. 10*, when any *incorrigible rogue* shall have been so committed, the sessions, after examining into the circumstances of the case, may order that the offender be further imprisoned to hard labour not exceeding one year, with or without whipping, if not a female.

Apprehension of offenders.]—By *sect. 6*, any person whatsoever may apprehend any person who shall be found offending against the act, and forthwith convey him before some justice, or deliver him to any constable or other peace officer to be so conveyed; and in case the officer shall refuse or wilfully neglect to take such offender into his custody, and convey him before some justice, or shall not use his best endeavours to apprehend and to convey before a justice any person that he shall find offending against the act, it shall be deemed a neglect of duty, and he is liable to be punished as afterwards directed.

A man may be arrested without warrant, under the above section, as a person found in a dwelling house with intent to commit a felony, if he is seen in the dwelling house, but gets out of it, and is taken on fresh pursuit, notwithstanding he was not seen getting out of the

(*q*) *R. v. Brown*, 8 T. R. 26.

(*r*) *R. v. Clarke*, Cowp. 35.

house, if he was found concealing himself upon other premises near, to avoid being apprehended. For it is not necessary to the validity of the arrest, that the party should have, at the time of the arrest, a *continuing* purpose to commit the felony; he may be arrested, although that purpose is wholly ended. And wherever the circumstances are such, that an offender cannot fail to know why a person is about to apprehend him, he need not be told the cause of the arrest; and any resistance will be equally illegal, as if he had been told (s).

By *sect. 7*, any justice, upon oath being made before him that any person hath committed, or is suspected to have committed, any offence against the act, may issue his warrant to apprehend the offender.

How property of offender to be dealt with.—By *sect. 8*, any constable or other person apprehending any offender may take any horse, mule, ass, cart, caravan, or other vehicle, or goods in his possession or use, and convey the same, as well as the party himself, before some justice; and every justice, by whom any person shall be convicted of any degree of vagrancy under the provisions of the act, may order that the offender be searched, and that his trunks, boxes, bundles, parcels, or packages, be inspected in the presence of the justice and of the offender, and also that any cart, car, caravan, or other vehicle, which may have been found in his possession or use, shall be searched in his presence; and the justice may order, that any money which may be found with or upon such offender shall be paid and applied towards the expence of apprehending and conveying him to the house of correction, and maintaining him during the time for which he shall have been committed; and if upon such search money sufficient for such purposes be not found, the justice may order that a part, or if necessary, the whole of such effects shall be sold, and that the produce of such sale shall be so paid and applied, and that the overplus, after deducting the charges of such sale, shall be returned to the offender.

Searching Lodging Houses.—By *sect. 13*, any justice, upon information on oath that any vagrant is, or is reasonably suspected to be, harboured or concealed in any house kept, or purporting to be kept, for the reception, lodging, or entertainment of travellers, may by warrant under his hand and seal authorize any constable, or

other person, to enter at any time into such house, and to apprehend and bring the party before him, or any other justice, to be dealt with in the manner before directed.

Recognizance to prosecute.—By sect. 9, when any justice shall commit any such incorrigible rogue to the house of correction, or when any party convicted under the act shall give notice of appeal, and shall enter into recognizance directed by the act to prosecute such appeal, the justice shall require the person by whom the offender has been apprehended, and the person whose evidence shall appear to him to be material to prove the offence and to support such conviction, to become bound in a recognizance to appear at the quarter sessions to give evidence against such offender; and the court of quarter sessions may order the treasurer of the county to pay unto the prosecutor, and the witnesses on his behalf, such costs as to the court shall seem reasonable, to reimburse them for their expenses and for their trouble and loss of time; which order the clerk of the peace is required to deliver unto them respectively, upon being paid the sum of 2s. If any such person shall refuse to enter into such recognizance, the justice may commit him to the common gaol until he shall enter into such recognizance, or shall be otherwise discharged by due course of law.

Liability and Protection of Constables.—By sect. 11, in case any constable or other peace officer shall neglect his duty in any thing required of him by the act, or in case any person shall disturb or hinder any person or other peace officer in the execution of the act, or shall be aiding, abetting, or assisting therein, and shall be thereof convicted upon the oath of one credible witness before one justice, where such offence shall be committed, the offender is liable to a penalty not exceeding 5*l.*, which, if not forthwith paid, the same may be levied by distress; and in default of distress, the justice may commit the offender to the house of correction not exceeding three calendar months, or until such fine be paid. The fine, when paid, is to go to the treasurer of the county, to be added to and used as part of the county stock.

Costs of prosecuting them.—By sect. 12, in case any constable or other peace officer shall be convicted before any justice for any neglect of duty required of him by the act, or of the disobedience of any lawful warrant or order of any justice issued under the provisions of the act, and in case any two justices shall impose any fine, or direct

any penalty to be paid by such officer, under the provisions of the 33 Geo. 3, c. 55 (t), or under any other powers enabling such justices in that behalf, such justice or justices, upon conviction of any such offender, may reimburse and allow to the person, on whose complaint such offender shall have been convicted, all necessary costs which he may thereby have incurred, or by any appeal made in consequence thereof, by making an order under his hand and seal upon the treasurer of the county for the payment of the amount.

Conviction.—By sect. 17, no proceeding is to be quashed for want of form; and a general form of conviction is given, in which the title of the act is required to be set out, namely, “An Act for the Punishment of idle and disorderly persons, and Rogues and Vagabonds, in that part of Great Britain called England.” The conviction is to be transmitted by the justice to the next quarter sessions, and there filed, and a copy of which so filed, duly certified by the clerk of the peace, may be read in evidence before any court, or any justice.

Where a conviction, in setting out the title of the act, omitted the word “part” before the words “of Great Britain called England,” it was held to be not a fatal variance (u). And in the same case it was held to be unnecessary to state, whether the offence was proved by view, confession, or witnesses; notwithstanding, in the form given by the above section, there is contained the direction “here state the offence proved,” and the third section of the act gives the justice power to convict only, on view, confession, or the oath of a witness. It is sufficient also in a conviction, to allege, that the defendant wilfully refused to maintain *his family* (being able to do so), whereby A. N., his wife, whom he was bound to maintain, became chargeable, &c.; without alleging more directly a refusal to maintain *his wife* (x).

Appeal.—By sect. 14, any person aggrieved by any act or determination of a justice, or justices, may appeal to the next quarter sessions, giving to the justice notice in writing of such appeal, and of the ground thereof, within seven days after the act appealed against, and before the next quarter sessions, and entering within such seven days into a recognizance, with sufficient surety, to prosecute such appeal; and upon such notice being given, and such recognizance entered into, the justice is empowered to discharge the party out of custody.

(t) See *ante*, p. 181.

(u) *Nixon v. Nanney*, 1 Q. B. Rep. 747.

(x) *Ibid*.

In the notice of appeal, it is sufficient to state, as the ground of appealing, that the appellant is not guilty of the offence (y).

By 1 & 2 Vict. c. 38, s. 1, where any person shall have appealed against a conviction under the above mentioned act, and shall not prosecute the appeal, any justice, on proof of such conviction, and of the certificate of the clerk of the peace that such appeal has not been prosecuted, may issue a warrant for the apprehension and committal of the party for such period of time as shall complete the full term for which such person was adjudged to be imprisoned at the time of his conviction.

Actions.—By 5 Geo. 4, c. 83, s. 18, where an action shall be brought against a justice, or any other person, for any thing done under the act, he is entitled to treble costs, if he has judgment in his favour, unless the judge shall certify. By sect. 19, every such action must be commenced within three calendar months after the cause of action or complaint, and the defendant may plead the general issue, and give the special matter in evidence.

Chargeability of persons convicted.—By sect. 20, every person, who shall be convicted under the act as an idle and disorderly person, or as a rogue and vagabond, shall be deemed to be actually chargeable to the parish or place in which such person shall reside, and he is liable to be removed to the place of his last legal settlement.

Where a party declared by other Acts to be punishable as a Rogue and Vagabond, &c.—By sect. 21, wherever, by any act of parliament then in force, it is directed, that any person shall be punished as an idle and disorderly person, or as a rogue and vagabond, or as an incorrigible rogue, for any offence specified in such act, and not provided for by the above act, in every such case, whether the party shall, or shall not, have committed any offence against the above act, he shall be punished under the provisions and directions of the above act.

1. *Conviction of a party for Begging in the Highway, under 5 Geo. 4, c. 83, s. 3 (z).*
 Middlesex, } Be it remembered, that on the — day of —, in the year of our
 to wit. } Lord 1843, at — in the county of Middlesex, A. B. is convicted before
 me, J. P., esquire, one of her Majesty's justices of the peace in and for the said
 county, of being an idle and disorderly person, within the intent and meaning of the
 statute made in the fifth year of the reign of his late Majesty King George the Fourth

(y) *R. v. Newcastle upon Tyne Justices*, 1 B. & Ad. 933.

(z) See *ante*, p. 1408.
 given by the act.

intituled, "An Act for the Punishment of idle and disorderly Persons, and Rogues and Vagabonds, in that part of Great Britain called England," that is to say, for that the said A. B., on the — day of —, in the year aforesaid, at —, in the parish of — in the said county, was wandering abroad, and then and there placed himself in — street aforesaid, the same being a public place and street, to beg and gather alms; and for which said offence the said A. B. is hereby ordered to be committed to the house of correction at — in the said county, there to be kept to hard labour for the space of one calendar month. Given under my hand and seal, the day and year, and at the place first above written.

2. *Warrant to apprehend a party for refusing to maintain his Wife and Family, under 5 Geo. 4, c. 83, s. 3 (a).*

County of } To the constable of —.
 —. }

Whereas A. B. of — hath this day made complaint and information upon oath before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, that C. D., of &c., labourer, being a person able to maintain himself and his family by work and by other means, did, on &c., at &c., wilfully neglect and refuse so to do, by which said refusal and neglect, the wife of the said C. D., and his three children, did then and there become chargeable, and are now chargeable, to the said parish of —, contrary to the form of the statute in such case made and provided: These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me the body of the said C. D., to answer unto the said complaint, and to be further dealt with according to law. Given under my hand and seal, this — day of —, in the year of our Lord 1843.

3. *Commitment of a party as a Rogue and Vagabond, for exposing to view an indecent Picture, under 3 Geo. 4, c. 83, s. 4 (b).*

County of } To the constable of — in the said county, and to the keeper of the
 —. } house of correction at — in the said county.

Whereas C. D. was this day duly convicted before me, J. P., esquire, one of her Majesty's justices of the peace in and for the said county, of being a rogue and vagabond, within the intent and meaning of the statute made in the fifth year of the reign of his late Majesty King George the Fourth, intituled, "An Act," &c. [set out the title of the act], that is to say, for that he the said C. D., on the — day of — instant, at the parish of — in the county aforesaid, did unlawfully and wilfully expose to view in a certain public place there situate, called — street, an obscene and indecent picture, for the purpose of attracting the gaze and notice of persons passing along the said street, contrary to the statute in such case made and provided; and the said C. D. was thereupon by me adjudged to be committed for the said offence to the house of correction at — in the said county, there to be kept to hard labour for the space of three calendar months: These are therefore to command you, the said constable, to convey the said C. D. to the said house of correction, and him to deliver to the keeper thereof, together with this warrant: And you, the said keeper, are hereby

commanded to receive the said C. D. into your custody in the said house of correction, and him there safely keep to hard labour for the space of three calendar months: And for so doing this shall be your sufficient warrant. Given under my hand and seal at —, this — day of — 1843.

Vegetable Productions—See Gardens.

Vestries.

ALTHOUGH a magistrate has no peculiar jurisdiction, except in some few instances, with respect to the proceedings of vestries, yet, as the subject forms so important a branch of Parish Law, with which the jurisdiction of magistrates is in general so intimately blended, it has been deemed proper to give a fuller notice on this head, than what at first seemed requisite. There are three different kinds of vestries: 1st, the *common law vestry*, which is an assembly of the whole parish; 2nd, a *select vestry* for the concerns of the poor, under 59 Geo. 3, c. 12, or one which is held by ancient custom, or under some local act; and 3rdly, a *vestry specially constituted* under the provisions of the 1 & 2 Will. 4, c. 60. Having already considered the law as to *select vestries* under the title *Poor* (c), we have only now to deal with the first and last descriptions.

1. *Of the Common Law Vestry.*

Where and how held.—This meeting is usually held in the *vestry* room of the parish church, and from that circumstance it derived its name. At the common law, every parishioner who paid to the church rates, or scot and lot, had a right to attend it; and, according to a modern decision, a parishioner is not disqualified from voting, although he had not paid his church rates (d). But, by 59 Geo. 3, c. 85, s. 3, no person who has neglected to pay any rate for the relief of the poor, which shall have been due from and shall have been demanded of him, shall be entitled to vote or to be present at any vestry. A vestry ought to be called by the churchwardens, with the consent of the minister; and a private parishioner has no right of his own authority to publish a notice for that purpose (e). And by 58 Geo. 3, c. 69, s. 1, no vestry can now be holden, until public notice shall have been given of the place and hour of meeting, and the special purpose

(c) See *ante*, p. 695.

(d) *Faulkner v. Elger*, 4 B. & C. 449.

(e) *Dawe v. Williams*, 2 Addams' Rep.

138.

thereof, three days at the least before the day appointed for holding the vestry, by affixing the same fairly written or printed on the principal door of the parish church or chapel. And by 7 Will. 4 & 1 Vict. c. 45, s. 3 (*f*), the notice must be signed by one of the churchwardens, or by the rector, vicar, or curate of the parish, or by one of the overseers of the poor; and it may be affixed either on, or near to, the principal door of the church or chapel. Before the meeting begins, it is customary to ring one of the church bells, to give the parishioners notice of their assembling together. If the minister of the parish be present at the meeting, he has a right to preside as chairman (*g*); and if he be absent, then, by 58 Geo. 3, c. 69, s. 2, the persons assembled are to appoint one of the inhabitants of the parish to preside over the meeting, who, in all cases of equality of votes, is (in addition to such vote or votes as he may be entitled to in right of his assessment) to have the casting vote. Minutes of the proceedings of the vestry are to be fairly and distinctly entered in a book, and signed by the chairman, and by such other of the inhabitants present, as shall think proper to sign the same.

By 58 Geo. 3, c. 69, s. 7, all the provisions of the act, in relation to parishes, are to extend to all townships and places having separate overseers and maintaining their poor separately; and all directions in regard to vestries apply to any meeting of the inhabitants of the township for any of the purposes of the act. If there is no church or chapel in the township, the notice of the meeting must be published in such manner as notices of the like nature have been usually published there.

By *sect.* 8, the act is not to extend to alter the time of holding any vestry or meeting, as prescribed by any other act of parliament, nor to affect the powers of any vestry or meeting by virtue of any ancient and special usage or custom, or the right or manner of voting at such vestry or meeting. And by *sects.* 9 and 10, the act is not to extend to any parish within the city of London, or the borough of Southwark.

Manner of Voting.—The common law mode of election is by

(*f*) The above statute of 7 Will. 4 & 1 Vict. c. 45, s. 1, prohibits any proclamation or other public notice for a vestry meeting, or any other matter, from being made or given in any church or chapel during or after divine service, or at the door of the church or chapel at the con-

clusion of the service; and, by *sect.* 2, declares that such notices shall in future be affixed previously to the commencement of divine service on, or near to, the church or chapel door.

(*g*) *Wilson v. M'Math*, 3 B. & Ald. 241; *Reg. v. D'Oyley*, 12 Ad. & E. 139.

show of hands, or by poll, and this is the proper mode of taking the votes at a vestry.

By 58 Geo. 3, c. 69, s. 3, every inhabitant present, who shall by the last poor rate have been assessed and charged in respect of any annual rent, profit, or value, not amounting to 50*l.*, is entitled to one vote,—if assessed to the amount of 50*l.* or upwards, (whether in one, or more than one, sum or charge,) he is entitled to one vote for every 25*l.* of annual rent, but so as not to give him more than six votes. Where two or more inhabitants present are jointly rated, each is entitled to vote, according to the proportion which shall be borne by him of their joint charge; and if one only shall attend, he is entitled to vote in respect of the whole of the joint charge.

By *sect. 4*, where any person shall have become an inhabitant since the last rate, he is entitled to vote in respect of the property for which he shall have become liable to be rated, and shall consent to be rated.

And by 59 Geo. 3, c. 85, s. 1, any person, who is assessed to the poor rate in respect of any annual rent, profit, or value, is equally entitled to vote, although he do not reside in the parish. By *sect. 2*, also, the clerk or agent of any corporation or company, which are rated, may vote in the same manner as any inhabitant.

It has been already stated, that the non-payment of rates not only disqualifies a man from voting, but from being present at the meeting.

Where the right of voting is regulated by the above provisions of the 58 Geo. 3, c. 69, s. 3, it is no objection to the proceedings, that the chairman directed a poll, without first taking a show of hands, although a show of hands was demanded, and the poll was not demanded, but was objected to; for a show of hands can be no criterion of the number of votes, where each man has a different number according to the amount of his assessment (*h*).

Where, on the election of churchwardens at a vestry, a poll having been demanded, the rector granted the poll, and ordered it to be held immediately on the close of the other business, and to be continued for three successive days, at a time and a place in the parish deemed by him most convenient, and which he had appointed by previous notice (after the publication of a summons by the old churchwardens) in case a poll should be demanded; and he refused to put a motion which had been proposed for a different appointment, of which a

majority of the old churchwardens had given previous notice; and, the other business lasting until seven in the evening, he directed that the poll should commence on the following morning, at the time and place of which notice had been given, although a majority of the meeting dissented from this arrangement; and the poll was so taken accordingly; it was held, that the poll was rightly taken (*i*). And where a local act directed, that on every Easter Tuesday the rate payers of the four districts of the parish should "in vestry assembled, or the *major part of them then present*, nominate" sixteen persons (each district nominating four) out of whom the justices in petty sessions should select four to be overseers; it was held, that the power of nomination was not confined to the persons present in vestry when the names were proposed, but that, after show of hands, a poll might be demanded and kept open for all the rate payers, as in ordinary cases. It was also held, that the statute containing the above clause was not "a special act," within the eighth section of the 58 Geo. 3, c. 69, excluding the operation of the third section; and, therefore, that the rate payers were entitled to one or more votes on such poll, according to the amount at which they were assessed (*k*).

Where the poor rates had, according to ancient custom in a parish, been always made without respect to the value of property, but according to the supposed ability of the party charged, it was held that the persons so rated were not rated "in respect of any annual rent, profit, or value," within the meaning of the above third section of the 58 Geo. 3, c. 69, and were therefore not entitled to more than one vote at a vestry meeting, although rated upon more than 50*l*. (*l*).

Adjournment.—The minister, or other chairman, who presides over the meeting, has the power to adjourn it, although against the wish of the majority present, on his legal responsibility if in so doing he improperly disturb the proceedings (*m*). But, if the rector adjourns the meeting so as to disturb the proceedings, in such case the Court of Queen' Bench will interfere by *mandamus* (*n*). Where notice was given that a vestry would be held in the parish church for the election of a churchwarden, and that if a poll was demanded, the meeting would be adjourned to the town hall; and, upon a poll being demanded, it was accordingly so adjourned; it was held that this proceeding

(*i*) *Reg. v. D'Oyley*, 12 Ad. & E. 139.

(*k*) *Ibid.*

(*l*) *Nightingale v. Marshall*, 2 B. & C.

(*m*) *Reg. v. D'Oyley*, 12 Ad. & E. 139.

(*n*) *Ibid.* 160; *Stoughton v. Reynolds*,

2 Str. 1045.

was regular, as the adjournment in a particular event was part of the original appointment (*o*).

Liability of Vestrymen.—Persons attending a vestry and signing a resolution that certain repairs shall be done to the parish church (*p*), or that the parish surveyor shall defend an indictment for not repairing a road (*q*), incur no individual responsibility by signing such resolution, unless they expressly guarantee the payment of the expenses (*r*).

Powers of Vestry.—The vestry has a superintending power over the proceedings of the churchwardens and parish officers, having a right to investigate and restrain the expenditure of the parish funds, and to determine the expediency of enlarging or altering the parish church, or of adding to or disposing of the goods or ornaments of the church. But it seems that the vestry has no authority in the distribution of the pews of the church, although the sense and opinion of the vestry ought to have weight with the churchwardens in this respect (*s*). The vestry, however, have the right of electing most of the officers of the parish, such as the sexton, beadle, and organist, and in some parishes, by immemorial custom, also the parish clerk. And when a vestry is duly and legally called, as every parishioner is bound to attend, he is equally bound by the acts of those who do attend the meeting (*t*). But the vestry cannot bind the rest of the parish by a resolution in a matter in which they have no jurisdiction, as by the allowance of improper disbursements in the overseer's accounts (*u*).

The acts of one vestry are not absolutely binding upon a succeeding vestry, and they may be confirmed or rescinded by such succeeding vestry; but such confirmation is not necessary to render the acts of the former vestry valid (*x*).

Penalty for injuring Parish Books.—By 58 Geo. 3, c. 69, s. 6, if any person in whose hands or custody any vestry-book, rate, assessment, account, voucher, certificate, order, document, writing or paper of the parish shall be, shall wilfully or negligently destroy, obliterate, or injure the same, or suffer the same to be so injured; or shall, after reasonable notice, refuse or neglect to deliver the same to such person,

^{*}(*o*) *R v. Archdeacon of Chester*, 1 Ad. & E. 342.

(*p*) *Lanchester v. Fricker*, 1 Bing. 201.

(*q*) *Spratt v. Powell*, 3 Bing. 478.

(*r*) *Heudebourck v. Langton*, 3 C. &

(*s*) *Pettiman v. Bridger*, 1 Phil. 316.

(*t*) *Clutton v. Cherry*, 2 Phil. 380.

(*u*) *R. v. Gwyer*, 2 Ad. & E. 216; 4 Nev. & M. 158.

(*x*) *Mawley v. Barbet*, 2 Esp. 687.

or to deposit the same in such place, as shall by the order of the vestry be directed, the offender, being convicted on the oath of one witness, before two justices, is liable to a penalty not exceeding 50*l.*, nor less than 40*s.*, to be recovered and levied in the same manner as poor rates in arrear, and to be paid to the overseers for the relief of the poor. But this enactment is not to prevent other proceedings, either criminally or civilly, against the offender.

2. Of Vestries constituted under the 1 & 2 Will. 4, c. 60.

The object of the 1 & 2 Will. 4, c. 60 is, to enable parishes containing a certain number of rated householders, and any parishes within cities or towns, to place themselves, if they think proper, under certain new regulations, as to the constitution of their vestries, and the auditing of their accounts.

Preliminary Proceedings as to adoption of the Act.—By *sect. 2* of the above mentioned act, any number of rate payers, amounting at least to one fifth of the rate payers of the parish, or to the number of fifty, may, between the first of December and the first of March, deliver a requisition by them signed, and describing their places of residence, to one of the churchwardens, requiring them to ascertain whether or not a majority of the rate payers wish that the act should be adopted in the parish. Upon receipt of this requisition, the churchwardens (by *sect. 3*) are required on the first Sunday in March, to affix a notice (in the form given by the act) to the principal doors of every church and chapel within the parish, specifying some day not earlier than ten days, and not later than twenty-one days after such Sunday, and at what place within the parish, the rate payers are required to signify their votes for or against the adoption of the act; which votes shall be received on three successive days, commencing at eight in the forenoon, and ending at four in the afternoon of each day.

By *sect. 42*, the words “church and chapel,” contained in the above and subsequent sections of the act, as to the affixing of notices, are to include only places of religious worship according to the forms of the established church; and where there is no such church or chapel, the notice is to be affixed to some public building within the limits of the same parish or place.

By *sect. 5*, the churchwardens are carefully to examine the votes, and compare them with the last poor rate, and after a full and fair summing up, by public notice (according to the form given by the act) to declare whether or not two thirds of the votes given have been

in favour of the adoption of the act; which number shall decide its adoption, provided the whole number of persons voting shall be a clear majority of the rate payers of the parish.

By *sect. 9*, if the rate payers shall determine against the adoption of the act, there can be no other requisition for the same purpose within three years.

By *sect. 6*, any of the rate payers, not exceeding five together, may inspect, at or in the vestry room, or in some convenient place within the parish, the votes given, at all seasonable times within one month after such notice.

Right of Voting.—By *sect. 7*, no person shall be deemed a rate payer, or be entitled to vote, unless he shall have been rated to the poor rate for the whole year immediately preceding his so voting, and shall have paid all the parochial rates, taxes, and assessments due from him, except such as have been made or become due within six months immediately preceding his voting.

Notice of Adoption.—By *sect. 8*, notice of the adoption of the act must be forthwith given by the churchwardens in the London Gazette, and in one or more of the public newspapers circulating in the county in which the parish is situate, and by affixing a notice of the same to the principal doors of every church and chapel within the parish. And, by *sect. 10*, after this notice, the act shall immediately become the law for electing vestrymen and auditors of accounts of the parish.

Penalty on Churchwardens for contravening the Act.—By *sect. 11*, if any churchwarden, or other parish officer, shall refuse to call meetings according to the provisions of the act, or shall refuse or neglect to make and give the declarations and notices directed to be made and given by the act, or to receive the vote of any rate payer, or shall in any manner whatever alter, falsify, conceal, or suppress any vote, he is declared to be guilty of a misdemeanor.

Election of Vestrymen and Auditors.—By *sect. 12*, on some Sunday at least twenty-one days previous to the annual election of vestrymen, notice of election, pursuant to the act, signed by the churchwardens, must be affixed to the principal doors of every church and chapel of the parish, and at other usual places, in the form given by the act. And by *sect. 13*, the churchwardens may summon the rate collectors to attend them on the day of annual election, in order to assist them in ascertaining that the persons presenting themselves to vote are parishioners rated to the relief of the poor, and duly qualified to vote.

By *sect. 14*, on the day of annual election, each parishioner then rated, and having been rated to the poor one year, is to meet at the place appointed for the election, when eight rate payers are to be appointed inspectors of votes, four of whom are to be nominated by the churchwardens, and four by the meeting. After such nomination, the parishioners are to elect such parishioners duly qualified, as may be there proposed for the offices of vestrymen and auditors; and the chairman is to declare the names of those who have been elected by a majority of votes.

On the nomination of the inspectors under the above section, the decision of the chairman, on a shew of hands, that one or the other party present at the meeting has a majority in the nomination of the four inspectors who are to be nominated by the meeting, is not conclusive; but he is bound, on requisition from either side, to take proper steps for ascertaining the real numbers. And when any doubt exists on which side the majority appears on the shew of hands, the proper mode of ascertaining the fact seems to be by dividing and counting those present on each side; for if a poll were to be granted, it would, by admitting all the parishioners to come in and vote, be inconsistent with the apparent intention of the act, that the business of nominating inspectors should be begun and finished at that meeting. The mere existence of party feeling in the chairman is not sufficient ground for impeaching a nomination of inspectors; but if, after improperly refusing to ascertain the numbers voting, he has declared certain persons to be the inspectors nominated by the meeting, and the election of vestrymen has thereupon taken place, the Court of Queen's Bench will grant a *mandamus* for a new election, although a considerable time may have elapsed; as where the election took place on the sixth of May, and a *mandamus* was moved for on the sixth June, although cause was not shewn till the fourth of November. And whenever four inspectors are improperly declared to be nominated by the meeting, a *mandamus* will be granted, although the other four inspectors were duly nominated by the churchwardens, and officiated at the election of vestrymen (*y*).

Mode and Right of voting, &c.—By *sect. 15*, any five rate payers may demand a poll, which shall be taken by ballot, each rate payer delivering to the inspectors two folded papers, one of which shall contain the names of the persons for whom the parishioner may vote as members of the vestry, and the other the names of those for whom

he may vote as auditors of accounts. Each rate payer is only to have one vote for vestrymen, and one vote for the auditors of accounts.

By *sect. 16*, the inspectors of votes are to deposit the folded lists, without previously opening them, in two separate sets of balloting glasses or boxes, one set for the vestry lists, and another for the auditors' lists; and the balloting glasses are to be closed at four o'clock in the afternoon of the last day of election. After the close of the ballot (by *sect. 17*), the inspectors are to proceed to examine the votes, and may continue the examination by adjournment not exceeding four days, Sunday excepted, until they shall have decided upon the persons duly qualified. By *sect. 18*, if an equality of votes should appear to be given for any two or more persons, the inspectors shall then decide by lot upon the persons so to be chosen.

Penalty for forging Names, &c.—By *sect. 19*, if any person forge, or in any way falsify, any name or writing in any paper or list purporting to contain the vote of any parishioner, or do by any contrivance attempt to obstruct or prevent the purposes of such mode of election, the offender, upon information laid, and conviction before any two justices having jurisdiction in the parish, is liable to a penalty of not less than 10*l.*, and not more than 50*l.*; and in default of payment, to be imprisoned not exceeding six, nor less than three months. The fine is to be paid, half to the informer, and the other half to the poor of the parish in which the offence is committed.

Notice of the persons elected.—By *sect. 20*, the inspectors, immediately after they have decided upon whom the election has fallen, must deliver to one of the churchwardens a list of the persons chosen; which list, or a copy thereof, shall be affixed to the doors of the churches and chapels, or other places chosen for the purposes of public notice in the parish.

Penalty on Inspector.—By *sect. 21*, if any inspector shall wilfully make, or cause to be made, an incorrect return of the votes, then, upon information laid before two justices having jurisdiction in the parish, and upon conviction for such offence, he is liable to penalty not less than 25*l.*, and not exceeding 50*l.*

Time and manner of Election.—By *sect. 22*, in all parishes adopting the act, the election of the vestrymen and auditors shall take place in the month of May in every year. If a ballot is demanded, it shall commence on the following day, and continue for three suc-

cessive days, commencing at eight o'clock in the forenoon, and closing at four in the afternoon. The day on which the election shall commence shall, in the first instance, be appointed by the churchwardens, but in every subsequent year by the vestry. And where a parish is divided into districts for ecclesiastical or other purposes, the votes are to be taken in some convenient place, at the discretion of the churchwardens, in each of the several districts.

Number of Vestrymen.—By sect. 23, the vestry elected are to consist of the following number of resident householders, viz. twelve where the number of rated householders shall not exceed 1000; twenty-four, where the number exceeds 1000; thirty-six, where the number exceeds 2000; and so on at the proportion of twelve additional vestrymen for every 1000 rated householders, provided that in no case the number shall exceed 120. But where in any parish a greater number of vestrymen are given by special act of parliament, then the number shall remain the same as given by such act. The rector, district rector, vicar, perpetual curate, and churchwardens of the parish, are to constitute a part of the vestry, and have a right of voting; provided that no more than one such rector or other minister, from any one parish or ecclesiastical district, shall *ex officio* be a part of the vestry.

One third to go out, and others elected annually.—By sect. 24, at the first election for vestrymen after the adoption of the act, one third of the then existing vestry, or the nearest number thereto, but not exceeding the same, shall retire from office (such parties to be determined by lot), and the parishioners are to elect a number of vestrymen equal to one third of the vestry; and on the next annual election, one half of the remaining part of the first vestry shall retire (such portion to be determined by lot), and the parish are again to elect a number equal to one third of the vestry; and on the third annual election, the last remaining portion of the vestry are to retire from office, and the parishioners are to elect vestrymen in like manner and number as at the two preceding elections, so as to fill up the vestry to the exact number of vestrymen prescribed by the act.

* Under this section it has been determined, that, at the first annual election after the adoption of the act, one third of the *then existing vestry*, that is, of the vestrymen *then alive*, without reference to the full number of the whole body, is to retire, and one third of the whole number (of which the vestry is ultimately to consist) to be elected in their room; that at the second annual election, one half

of the number of original vestrymen then existing are to retire, and again one third of the whole number (of which the vestry is to consist) to be elected; and that at the third election, all the remaining original vestrymen are to retire, and the parishioners are then to elect a sufficient number of vestrymen, so as to fill up the vestry to the exact number of vestrymen originally appointed under the provisions of the act. For, whatever may be the deficiency in the number of the existing vestry at the two first elections, the above section only requires that number to be completed at the third election (*z*).

By *sect. 25*, at every subsequent annual election, those vestrymen who have been three years in office are to go out of office, and the parishioners are to elect an equal number in their room, and also to fill up vacancies occurring from death or other causes. But all the vestrymen thus going out by rotation may be immediately re-elected.

Where a parish, previously to adopting the act, had been divided into four districts for more conveniently collecting the rates, and this division had been adopted for taking the poll in the election of members of parliament, and a small part also of the parish was annexed to part of an adjoining parish, and separated from the original parish, for ecclesiastical purposes; it was held, that the election of vestrymen and auditors might be made in one place of the parish only (*a*).

Qualification.—By *sect. 26*, the vestry in any parish, not within the metropolitan police district of the city of London, are to consist of resident householders rated to the poor upon a rental of not less than 10*l.*, and occupying the premises so rated. But if the parish be within the metropolitan police district of the city of London, or if the resident householders in the parish are more than 3000, then the qualification for a vestryman is a rental of not less than 40*l.* per annum. The rental, however, in this case, may be made up of tenements separately held, and not in the occupation of the vestrymen (*b*).

The qualification must be perfect at the time of election; but, if unqualified persons are elected, this does not avoid the election of qualified vestrymen or auditors elected at the same time (*c*). Where a parish which adopted the act had previously been governed by a local act, which defined the qualification of a vestryman, and pre-

(*z*) *Rex v. St. Pancras*, 1 Ad. & E. 80.

(*a*) *Ibid.*

(*b*) *Ibid.*

(*c*) *Ibid.*

scribed an oath to be taken, before any vestryman should be capable of acting in the execution of the local act; by which oath, the person swore to execute the powers reposed in pursuance of the same, and that he was possessed of the qualification prescribed thereby, which was different from that required by the above statute; it was held, that this oath was not to be taken by the vestrymen elected under the above statute (*d*).

Reservation of powers of Local Acts.]—By *sect. 27*, the vestries appointed after the adoption of the act are to exercise the authority of former vestries. But nothing in the act contained is to repeal any local act for the government of any parish by a vestry, or for the management of the poor by a board of directors and guardians, or for the due provision of divine worship within the parish, and the maintenance of the clergy officiating therein, otherwise than is expressly enacted regarding the election of vestrymen and auditors of accounts.

Quorum.]—By *sect. 28*, the acts of the major part of a vestry assembled at any meeting are binding, where five are present out of a vestry consisting of twelve and not exceeding twenty-three; or where seven are present out of a vestry consisting of twenty-four and not exceeding thirty-five; or where nine are present out of a vestry consisting of thirty-six or upwards; provided such acts are confirmed by the next subsequent meeting of the vestry.

By *sect. 29*, the vestry meeting is not to be held in the church.

Chairman.]—By *sect. 30*, in the absence of the persons authorized by law or custom to take the chair, the members present are to elect a chairman for the occasion, before proceeding to other business.

Vestry Books.]—By *sect. 31*, a proper book or books are to be kept, and proper entries made therein of the several vestrymen who attend the different meetings, and of all orders and proceedings; which books are to be open at all reasonable times to the inspection of the vestrymen, the persons rated to the poor, and any creditor on the parish rates. And if the vestry clerk, or other person having the care of the books, shall refuse to permit, or shall not permit such persons to inspect the same, or to take copies or extracts therefrom, he is liable to a penalty not exceeding 10*l*.

By *sect. 32*, account books are also to be kept, and true and regu-

lar accounts entered therein of all sums received and disbursed for parochial purposes, which books are also to be open to the like inspection, under the like penalty.

Election of Auditors.—By sect. 33, the parishioners duly qualified to vote for vestrymen shall elect five rate payers of the parish, who shall have signified in writing their assent to serve, to be auditors of accounts, who are to be elected on the first day on which the vestrymen shall be chosen after the adoption of the act, and according to the same forms of voting as are prescribed for the election of the vestry. No person is eligible as auditor, who shall not be qualified to fill the office of vestryman; but no vestryman can be elected auditor; and if any person is chosen to be both vestryman and auditor, the vestry, at their first meeting after such election, shall declare him incapable of acting as vestryman. No one, also, is eligible as auditor, who is interested, either directly or indirectly, in any contract, office, business, or employ, or in providing or supplying any materials or articles for the parish; and if any one shall be discovered after his election to be so interested, he shall cease to be an auditor.

Mode of Audit.—By sect. 34, the auditors are to meet twice at least in each year at the board room of the vestry, and if a majority of them are present, they are to audit the accounts of the parish for the preceding half year, in presence of the vestry clerk. The vestry are required, by their clerk, to lay before the auditors a true account in writing, accompanied with proper vouchers, of all sums which may have come to their hands or those of their treasurer, and of all monies paid by them, or by any churchwardens, overseers, or other persons employed by them, since the last period up to which the accounts were previously audited. And in all parishes in which other boards have control over any part of the parochial expenditure, the auditors are to have the same power of examining their accounts and officers, and are to audit the accounts of those boards in the same manner as they audit the accounts of the vestry.

Trustees appointed under a local act for building a new parish church, with power to make rates for that purpose, and for discharging debts to be incurred under the act, are liable to account before auditors appointed under the above section, as a board having control over part of the parochial expenditure, although the local act requires such trustees to keep an account of the assessments, receipts and payments under the act to be examined and allowed once a year

at quarter sessions, and though, by the same act, their accounts are open to inspection (on payment of 1s.) by any person liable to the above rates. But the auditors cannot call upon the trustees to produce "the accounts," without limit as to time, kept by them under the local act (e). Nor have the auditors any authority to call upon a board to attend with and produce to the auditors their accounts *at such time and place* as a majority of the auditors may appoint; for the 14th section requires them to meet at a specified place, viz. *the board room of the vestry*; and they cannot call upon the board to produce their accounts in any place and at any time that the auditors may think fit to appoint (f).

May call for persons and Books.]—By sect. 35, the auditors have power to summon and call before them, by a writing for that purpose signed by any one of them, or by the vestry clerk, any parish officer or other person whatsoever concerned in the accounts, and to require of him to attend the auditors at any meeting or adjourned meeting, and to bring with him all books of accounts, writings and documents required, which may concern such accounts, and to give such information as to the particulars of such accounts, as he shall be called to give; and any parish officer or other person refusing so to attend, or otherwise wilfully obstructing the purposes of the inquiry, is declared to be guilty of a *misdemeanor*.

Signature, Inspection, and Publication of Accounts.]—By sect. 36, the accounts, when approved by the auditors, or the major part of them, are to be signed by them in the presence of the vestry clerk, who is also to affix his signature; and the auditors may subjoin such remarks as to them shall seem meet. And by sect. 37, the accounts are then to remain at the office of the vestry clerk, and are to be open for the examination, at all seasonable times, of any person rated to the poor, and any creditor on the rates. But nothing in the act contained is to debar the parishioners from any legal remedy by them before possessed.

By sect. 38, an abstract of the accounts is, twice in every year, within fourteen days after they have been audited, to be made out by the vestry, and a copy to be delivered to all rate payers applying for the same, on payment of 1s.; which copies the vestry clerk is required to have published.

(e) R. v. St. Pancras Church Trustees,
6 Ad. & E. 314.

(f) *Id.* 3 Ad. & E. 535.

Account of Estates, Charities, &c.—By *sect. 39*, the vestry are also to make out, once at least in every year, a list of the several estates, and of all charitable foundations and bequests belonging to the parish, specifying the yearly rental of each, and the particular appropriation thereof, together with the names of the persons partaking of their benefits (except when allotted to the poor of the parish generally), and to what amount in each case, and also stating the names and description of the persons in whom such estates are vested, and the names and description of the trustees for each charity; and such list shall be open for the inspection of the rate payers, at the office of the vestry clerk, at the same time with the accounts when audited.

By *sect. 40*, the act is not to affect any ecclesiastical jurisdiction, except so far as concerns the appointment of vestries.

To what Parishes the Act is to extend.—By *sect. 43*, the act is not to extend to any parishes not being within or being part of any city or town, in which parish there shall not be a greater number than 800 persons rated as householders, and having paid the poor rates within the year preceding that in which the provisions of the act may be desired to be put in execution.

Victuallers—See Alehouses.

Volunteers.

BY 44 Geo. 3, c. 54, for consolidating the law relating to the yeomanry and volunteers, it is provided by *sect. 33*, that, where any person belonging to a corps of yeomanry or volunteers, who may have given notice to his commanding officer to resign, may think himself aggrieved by reason of such commanding officer refusing to strike his name out of the muster roll, he may appeal to any two deputy lieutenants of the subdivision in which such corps shall have been formed, or of any adjoining subdivision, or to any one deputy lieutenant and one justice, acting within any such subdivision (not being members of the corps), who shall hear and determine such appeal, and examine any persons thereon upon oath, and may discharge such person, if they shall think, under all the circumstances, that he hath complied with the requisitions of that act, and may order the commanding officer forthwith to strike such person out of the muster roll, or order and direct the payment of such sum as may

appear to them ought to be paid by him in respect of any subscription, or arrears of subscription, or any fines or forfeitures, or may order and direct the delivery of any arms, accoutrements, clothing and appointments, or the payment of any sum as shall appear reasonable for any loss on account thereof, or any damage that may have been done thereto before such discharge; which sums may be levied and applied as any like fines or sums of money may be recovered and applied. And the determination of such deputy lieutenants and justices shall be final and conclusive.

Penalty for selling or buying Arms or Accoutrements.—By sect. 44, in case any man shall sell, pawn, or lose any arms, accoutrements, clothing or ammunition delivered to him, or shall wilfully damage any such arms or accoutrements, he shall for every offence forfeit not exceeding 40s.; and in default of payment, any justice residing in or near the place where the offence shall be committed may take cognizance of the same, and commit the person convicted of such offence before him to the next gaol or house of correction, to be kept to hard labour not exceeding one week, or until he shall have paid the penalty.

And by sect. 45, if any person shall knowingly and wilfully buy, take in exchange, conceal, or otherwise receive any arms, accoutrements, or clothing, or any public stores or ammunition delivered for the use of any corps of yeomanry or volunteers, he shall forfeit for every offence 10l.; and in default of payment, and of a sufficient distress, the justice before whom he shall be convicted shall commit the offender to the common gaol or house of correction for three months, or until payment of the fine.

Penalty for not paying Subscriptions, &c.—By sect. 51, where any volunteer shall neglect or refuse, on demand made for that purpose, to pay any sum subscribed, or required by the rules of the corps to be subscribed, by him towards any expenses thereof, or to pay any fines or penalties incurred under any of them, any justice residing in or near to the place where such corps shall be, on application made for that purpose by any commanding or field officer, or adjutant or serjeant major under any order of the commanding officer of any such corps, and on proof thereof, may direct double the amount thereof to be paid as a penalty; and if such person shall refuse or neglect to pay the same for seven days, he may cause the same to be levied by distress, by warrant under his hand and seal; and the sums so levied shall go to the general stock of such corps,

to be applied in the general expenses thereof, in like manner as any subscription may be applied; or where there shall be no such subscription or stock, then to any such purposes as the commanding officer may think fit. But the justice may mitigate any such accumulated fines or penalties, so that the amount thereof shall not be less than one-half of the full amount of such accumulated fines and penalties.

Penalty on persons refusing to give up Arms.—By sect. 52, every person who shall have received, or have in his custody or possession, any arms, accoutrements, clothing, ammunition, or stores, or drums, fifes or musical instruments, or other articles furnished from the public stores, or at the public expense, or at the expense of any subscription for providing such articles, and who shall refuse or neglect, on being required by the commanding officer for the time being, or by his direction, to deliver up such articles, shall, on being convicted thereof before any justice of the county within which such articles shall be, forfeit 10*l.* for every offence, and double the value of the articles so detained, to be levied by distress, by warrant under hand and seal; and in default of distress, the justice is to commit the offender to the common gaol of the county or place where the offence shall have been committed, not exceeding two months; and the monies arising by such penalty are to be applied to the use of the crown.

—♦—
Wages—See **Servants**.

—♦—
Walls—See **Fences**.

—♦—
Warlike Stores—See **Stores of War**.

—♦—
Warrant of Apprehension.

AS to a warrant of *commitment*, see **Commitment**.

As to a warrant of *distress*, see **Distress**.

As to a *search warrant*, see **Search Warrant**.

And where a party may be arrested, *without a warrant*, see **Apprehension of Offenders**.

A justice of the peace may issue a warrant for the arrest of any person, charged upon oath before him with having committed a

felony, an indictable misdemeanor, or a breach of the peace, or if the party making the charge will swear that he has strong grounds to suspect that the person charged by him has really committed the offence, of the reasonableness of which suspicion the magistrate is to judge (*g*). But in the lighter kinds of misdemeanor, where there is no proof that the party is likely to abscond, the proper course is to issue a summons in the first instance. And in all cases where the king is no party, as in cases for servants' wages and the like, a summons is the proper process; and in default of the appearance of the defendant, the justice may either proceed *ex parte* in his absence, or if he thinks it advisable, may issue a warrant to bring the party before him; for, whenever a statute gives a magistrate jurisdiction over an offence, it necessarily gives him the power incident to all courts of compelling the offender to come before him (*h*).

By 3 Geo. 4, c. 23, s. 2, in all cases where two justices are required to hear and determine the complaint, one justice is competent to issue the summons or warrant requiring the party to appear before two justices.

Form of the Warrant.—The warrant must state the county where it is made, either in the margin or in the body of the warrant, and it is the better course, though not absolutely necessary, to show also the place where it is made (*i*). It should be directed to the constable of the parish or district where it is to be executed, or it may, if the magistrate thinks fit, be directed to any indifferent person; for the justice may authorize any one to be his officer, whom he pleases to make such; but, in this latter case, it should be directed to the party by name (*k*). The warrant should also mention the name of the party to be apprehended, and ought not to be left in general, or with blanks to be filled up after the magistrate has issued it (*l*). For a general warrant to apprehend the authors, printers, and publishers of a libel, without naming them, is illegal (*m*); or a warrant, upon a complaint of robbery, to apprehend *all persons suspected*; and false imprisonment lies against him that issues such a warrant (*n*). But, if the name of the offender be unknown, the warrant may then be issued against him by the best description which the nature of the case will allow; as "the body of a man whose name is unknown,

(*g*) 1 Hale, 579; 2 Hale, 79, 80, 108, 110; 2 Hawk. c. 13, s. 18.

(*h*) 2 Hawk. c. 13, s. 15; *Bane v. Methuen*, 2 Bing. 63. And see *ante*, *Justices*, p. 500.

(*i*) 2 Hawk. c. 13, s. 23.

(*k*) *Id.* sect. 27.

(*l*) 2 Hale, 114.

(*m*) *Money v. Leach*, 1 Bla. R. 555.

(*n*) 1 Hale, 580; 2 Hale, 112.

but whose person is well known, and who is employed as the driver of cattle, and wears a badge, No. 573" (o). If no reason, however, is assigned for the omission of the name, and no distinguishing particulars given of the party to be arrested, the warrant will be bad; as where a warrant was issued to apprehend "— Hood, of B., in the parish of F., by whatsoever name he may be called or known, the son of Samuel Hood" (p). The warrant ought to state concisely the cause for which it is granted, that the party arrested may know why he is deprived of his liberty; for, as the king's writs, in the language of Lambard, do bear their proper cause in their mouth with them, so ought the warrant of a justice of the peace to comprehend the special matter upon which it proceedeth; and as for the form that was then commonly used, he adds, "to answer to such things as shall be objected," and such like, they were not fetched out of the old learned precedents, but lately brought in by such as either knew not, or cared not, what they writ (q). The warrant ought to show, likewise, that the information, upon which it issues, was taken *upon oath* (r).

A warrant to apprehend an offender need not be returnable at any particular time, or at any certain place (s); and it continues in force, until it is fully executed and obeyed (t). If the warrant be to bring the offender before the justice who issues it, or before any other justice of the county, it is in the election of the officer to bring him to what justice of the county he thinks fit, and not in the election of the prisoner (u). The year and day ought to be set forth when the warrant is made, in order that it may appear that it was duly issued prior to the apprehension of the party, and also, in case a statute direct the prosecution to be within a certain time, that it may appear that the prosecution is commenced within such time. If a warrant is not made out until several days after a party is committed, he may have an action for false imprisonment; for a commitment is not like a conviction, which may be made at any time (v). It should be made under the hand and seal of the justice (x), unless the particular statute under the authority of which it is granted, as is sometimes the case, dispenses with the warrant being under seal (y). Where a warrant is required to be issued by two justices, they should be

(o) 1 Hale, 577.

(p) *R. v. Hood*, 1 Mood. C. C. 281.

(q) Lamb. 87.

(r) *Caudle v. Seymour*, 1 Q. B. R. 889.

(s) 4 Bl. Com. 291.

(t) *Dickinson v. Brown, Peake*, N. P.

234; 1 Esp. 218.

(u) 1 Hale, 582; 2 Hale, 112.

(v) *Hutchinson v. Lowndes*, 4 B. & Ad.

118.

(x) 2 Hawk. c. 13, s. 21.

(y) *Pudfield v. Cabell*, Willes, 411.

acting together when they determine to issue it; but it is not necessary that they should be together when each signs it (*z*).

It seems to have been doubted in a recent case, whether a magistrate could, under any circumstances, withdraw or countermand a warrant, after having once issued it (*a*). But it would be a strange doctrine to hold, that, if a magistrate finds he has been imposed upon by a false accusation, or that the complainant himself acknowledges he is mistaken, the issuing of the warrant is nevertheless irrevocable, and that the officer is bound to execute it, in spite of the countermand of the magistrate. As an order of removal therefore may, before its execution, be superseded by the justices who made it, and this of their own authority, and without the consent of the removing parish (*b*), it would seem to follow, for the like reason, that they may countermand a warrant for the arrest of an individual, if the officer has not previously executed it; for, if the warrant has been executed, it must then be admitted that no subsequent countermand of it by the magistrate would release him from the responsibility of having issued it.

Backing the Warrant.]—The jurisdiction of a magistrate extending only to the county for which he is appointed under the commission of the peace, his warrant cannot be executed out of his own county, unless it be *backed*, that is, indorsed by a justice of the county in which it is to be carried into execution (*c*). For the guidance of magistrates in this respect, some important directions are given by the 24 Geo. 2, c. 55, s. 1, which provides, that where any person against whom a warrant is issued shall escape, go into, reside, or be in any other county or place out of the jurisdiction of the justice granting the warrant, any justice of that county or place, upon proof on oath of the handwriting of the justice granting the warrant, may indorse his name on the warrant, which shall be a sufficient authority to the person bringing it, and to all other persons to whom it was originally directed, to execute it in such other county or place, and to apprehend and carry the offender before the justice who indorsed the warrant, or some other justice of that county. And in case the offence for which the offender is apprehended shall be bailable, the justice of such other county may take bail for his appearance at the next assizes or general gaol delivery, or at the

(*z*) *Battye v. Gresley*, 8 East, 319.

(*a*) *Barons v. Luscombe*, 3 Ad. & E.
589.

(*b*) *Pancras v. Rumbold*, 1 Str. 6; 2
Bott, 631; *ante*, p. 936.

(*c*) 2 Hale, 115.

next general quarter sessions for the county in which the offence was committed; and the justice of such other county must deliver the recognizance, together with the examination or confession of the offender, and all proceedings relating thereto, to the constable apprehending him, who is required to deliver the same to the clerk of the peace of the county where the offender is required to appear. In case the constable to whom such recognizance or other proceedings are delivered, shall neglect to deliver over the same to the clerk of assize, or clerk of the peace, of the county where the offender is required to appear, he shall forfeit the sum of 10*l.*, to be recovered against him by action in the Courts at Westminster. If the offence for which the party is so apprehended shall not be bailable, or the offender shall not give bail to the satisfaction of the justice before whom he shall be so brought, then the constable apprehending him must convey him before a justice of the proper county where the offence was committed.

Under this statute, the justice may order, if he thinks fit, at the time he indorses the warrant, according as the offence may appear bailable or not bailable upon the face of the warrant, that the offender shall be brought before himself or some other justice of that county, or that he shall be carried back into the county from whence the warrant issued. But the magistrate cannot exercise a discretion as to indorsing the warrant, for he is bound to do so, if oath be made of the handwriting of the justice who granted it (*d*).

Where the Offender escapes into Scotland.—By 13 Geo. 3, c. 31, s. 1, if any person, against whom a warrant shall be issued by a justice of any county in England, shall escape, go into, reside, or be in any county or place of Scotland, the sheriff or steward, depute or substitute, or any justice of the peace of that county or place, may also indorse his name on the warrant, which shall be a sufficient authority to the person bringing the warrant, and to all persons to whom the warrant was originally directed, and also to all peace officers of the county where the warrant shall be indorsed, to execute it in that county, by apprehending the party, and to convey him into that county of England adjacent to Scotland in which the crime was committed, and before one of the justices of such county, to be there dealt with according to law; or, in case the crime was committed in a county not next adjacent to Scotland, then to convey him into any

county of England next adjacent to Scotland, and before one of the justices of that county, who is required to proceed in the manner directed by the above act of 24 Geo. 2, c. 55.

Where the Offender escapes from Scotland into England.—By sect. 2, if any person against whom a warrant shall be issued in Scotland, for any crime or offence against the laws there, shall escape or be in any county or place in England, any justice of that county may likewise indorse his name on the warrant, which shall be a sufficient authority to the person bringing the warrant, and all others to whom it was originally directed, and all peace officers of such county, to execute the warrant where it is so indorsed, by apprehending the party, and to convey him into that county of Scotland adjacent to England, where the crime was committed, and before the sheriff, or steward, depute or substitute, or one of the justices of the peace of that county, to be there dealt with according to law; or, if the crime was committed in a county not next adjacent to England, then to convey him into any county of Scotland next adjacent to England, before such sheriff or justice, who is required to proceed with regard to the offender according to the rules and practice of the law of Scotland.

By sect. 3, the expense of so removing prisoners is to be repaid to the person defraying the same, by the treasurer of the English county, or by the sheriff or steward, depute or substitute, of the Scotch county in which the crime was committed; the amount of such expense being previously ascertained by an account verified upon oath before two justices of such county, and allowed and signed by them.

Where the Offender escapes from Ireland into Great Britain.—By 44 Geo. 3, c. 92, s. 3, if any person against whom a warrant is issued in Ireland shall escape, or be in any county or place in England or Scotland, any justice of the peace of that county may in like manner indorse his name on the warrant, which shall be a sufficient authority, as in the cases above-mentioned, to execute it in the English or Scotch county, and to convey the offender by the most direct way into Ireland, and before one of the justices living near the place and in the county where he shall arrive and land, which justice is to proceed as if the party had been legally apprehended in Ireland.

And by sect. 4, the same provision is made as to offenders escaping

from England or Scotland into Ireland, being apprehended and conveyed back again to *England or Scotland* (e).

Power of Justices to take Bail.—By 45 Geo. 3, c. 92, s. 1, where the offence, in the last-mentioned cases of an offender escaping from one part of the United Kingdom to another, is bailable, the justice by whom the warrant is indorsed may take bail, in the same manner as the justice who issued the warrant; in which case he must take the recognizance of bail in duplicate, and deliver one of such duplicates to the officer apprehending the party, who is required to deliver the same to the clerk of the crown, clerk of the peace, or other proper officer belonging to the Court, in which by the recognizance the offender shall be bound to appear; and the other of such duplicates is to be transmitted by the justice to the Court of Exchequer of such part of the United Kingdom in which bail shall be taken, there to be kept of record. The Court, in which any person so bound to appear shall forfeit his recognizance, is to transmit a certificate testifying the forfeiture thereof, under the seal of the Court or of one of the judges thereof, to the Court of Exchequer in that part of the United Kingdom in which the recognizance shall have been taken, which Court may then proceed to levy the sum forfeited, in the same manner in which they proceed upon other forfeited recognizances. If the offence be not bailable, or the offender shall not give bail, the justice is to remand him to the custody of the officer who shall have apprehended him, and who must convey him into that part of the United Kingdom wherein the offence was committed, in the manner provided by the above acts.

Warrant to be marked, where the Offence not bailable.—By sect. 2, where it shall appear to the justice granting the warrant that the offence is not bailable, he is required to write upon the face of the warrant the words “not bailable;” and where such words are not so written, the justice before whom any offender is brought under a warrant so indorsed may admit the offender to bail.

Warrants may be indorsed and acted upon in either Country.—By 54 Geo. 3, c. 186, all warrants issued in *England, Scotland, or Ireland* respectively, may be indorsed and executed, and enforced and acted upon in any part of the united kingdom in like manner as is directed by the above act of 13 Geo. 3, c. 31, in relation to warrants issued in *England* and *Scotland* respectively, as fully and effec-

(e) And see title **Warrant**, in the *offenders escaping from the United Kingdom to the colonies, or vice versa*.
Addenda, for a similar provision as to

tually as if all the provisions of that act were separately re-enacted, as to every part of the United Kingdom, and as to all justices of the peace and constables in Ireland, as well as in England and Scotland respectively.

Mode of executing the Warrant.—The directions of the warrant must be strictly observed, or the party executing it will not be justified in his acts, and may be treated as a trespasser; as if the warrant be to arrest A., and he arrest B. If the party executing the warrant is a constable, or peace officer, acting within his own precinct, and known to be such, he is not obliged to show his warrant; but otherwise, if he acts out of his district, and is not known to be a peace officer, provided the party arrested demands to see it (*e*). And in all cases, the more prudent course is to show the warrant, if demanded; for the non-production of it may affect the officer, in case of any direct resistance to the arrest, when the legality of the warrant enters materially into the merits of the question; and, as Lord Kenyon observed in one case, a person is not bound to take it for granted, that another who says he has a warrant against him, without producing it, speaks truth (*f*). Moreover, for the officer's protection against an action, if the party arrested demand a sight of the warrant, the officer is bound to show it to him, and to permit him to take a copy of it; but he is in no case required to part with it, for the warrant is his only justification (*g*). Where the officer entrusted with the execution of the warrant employs other persons to assist him, he must be so near as to be himself acting in the arrest, in order to render it legal (*h*). The warrant may be executed at any time while it is in force, and an arrest in the night is often necessary, to prevent the escape of the party. A person may be apprehended twice under the same warrant, if the purposes of the warrant have not been effected (*i*).

And see further, as to the manner of making an arrest under a warrant, and when doors may be broken in the execution of it, *Apprehension of Offenders*, *ante*, p. 38.

1. General Form of Warrant to apprehend a Party.

Sussex, } To A. B., the constable of —, and all other peace officers in the said
to wit. } county.

Forasmuch as C. D. of —, in the county aforesaid, labourer, hath this day been charged before me, J. P., esquire, one of her Majesty's justices of the peace for the county aforesaid, on the oath of a credible witness, for that he the said C. D., on the

(*e*) 2 Hawk. c. 12, s. 20.

(*f*) *Hall v. Roche*, 8 T. R. 188.

(*g*) 1 East, P. C. 319.

(*h*) Cowp. 66.

(*i*) *Dickenson v. Browne*, Peake Rep. 234.

— day of —, in the year of our Lord —, at — in the said county, did, &c. [*here state the offence*]: These are therefore to command you, in her Majesty's name, forthwith to apprehend and bring before me, or some other of her Majesty's justices of the peace in and for the said county, the body of the said C. D., to answer unto the said charge, and to be further dealt with according to law. Herein fail you not. Given under my hand and seal the — day of —, in the year of our Lord 1843.

J. P.

2. Form of Backing or Indorsing a Warrant.

County of Surrey, } Forasmuch as proof upon oath hath been made before me,
to wit. } G. H, esquire, one of her Majesty's justices of the peace in
and for the said county of —, that the name J. P. is of the handwriting of the justice
of the peace within mentioned, I do hereby authorize A. B., who bringeth to me this
warrant, and all other persons to whom the said warrant is directed, to execute the
same within the said county of Surrey. Given under my hand the — day of —,
in the year of our Lord 1843.

Warrens—See Rabbit Warrens.

Watching and Lighting—See Lighting and Watching.

Water Companies—See Street Act, 1252.

Watermen—See Chams.

Weights and Measures.

BY 5 Geo. 4, c. 74, s. 23, all parts of any former statutes and ordinances that related to the ascertainment of weights and measures are repealed; and by various sections of the act new uniform standards are established throughout the United Kingdom. But by *sect.* 21, all the powers, rules, and regulations contained in the several acts of 29 Geo. 2, c. 25; 31 Geo. 2, c. 17; 35 Geo. 3, c. 102; 37 Geo. 3, c. 143; and 55 Geo. 3, c. 43, are directed to be applied and put in execution in Great Britain for the examining, and for the seizing, breaking, and destroying of any weights and measures not conformable to the standard weights and measures authorized by the new act, and for the punishment of any person having any defective weight or measure not conformable to the new standard. It will be necessary therefore to examine the penal enactments of the statutes above referred to, which give any jurisdiction to a justice of the peace.

Unlawful Weights and Measures in Westminster.—The two first mentioned statutes are confined to the city and liberty of Westminster. By 29 Geo. 2, c. 25, s. 14, the annoyance jury therein mentioned may enter into any shop, house, or warehouse belonging to any person that deals by weight or measure, and if they shall find any weight, balance, or measure to be unlawful or defective, they may break and destroy it, and amerce the offender in any penalty not exceeding 40s.

And by 31 Geo. 2, c. 17, s. 9, all weights and measures made use of by persons dealing by weight or measure within such city and liberty must be sized and sealed by the standards belonging to such city, and also marked with a portcullis by the proper officer; and all weights and measures not so sealed are declared unlawful; and the annoyance jury, or twelve or more of them, are required to destroy them and amerce the owners, or the person in whose possession they shall be found, in a sum not exceeding 40s. for any one offence.

All the enactments contained in the 35 Geo. 3, c. 102, and 37 Geo. 3, c. 143, seem to be entirely superseded by those of the 55 Geo. 3, c. 43; and all those contained in the last mentioned statute are again superseded by the subsequent enactment of the 5 & 6 Will. 4, c. 63.

Penalty for using Local Measures.—By 5 & 6 Will. 4, c. 63, various new regulations are made as to the models and copies of weights and measures; and by *sect. 6*, the *Winchester* bushel, and the *Scotch* ell, and all local or customary measures are abolished; and every person, who shall sell by any denomination of measure other than one of the imperial measures, or some multiple, or some aliquot part, such as half, the quarter, the eighth, the sixteenth, or the thirty-second parts thereof, is liable to a penalty not exceeding 40s. for every such sale. But this is not to prevent the sale of any articles in any vessel not represented as containing any amount of imperial measure, or of any fixed, local, or customary measure heretofore in use.

Penalty for Selling by heaped Measure.—By *sect. 7*, the use of the heaped measure is also abolished, and all bargains, sales, and contracts, which shall be made by the heaped measure are declared to be null and void; and every person, who shall sell any articles by such measure, is also liable to a penalty not exceeding 40s. for every such sale.

Penalty for selling Coals, except by Weight.—By *sect. 9*, every person, who shall sell any coals, slack, culm, or cannel of every description, by measure, and not by weight, is liable to a penalty not exceeding 40s. for every such sale.

Weights defined, &c.—By *sect. 10*, all articles sold by weight are required to be sold by *avoirdupois* weight,—except gold, silver, platina, diamonds, or other precious stones, which may be sold by troy weight,—and drugs, which, when sold by retail, may be sold by apothecaries weight. By *sect. 11*, the weight denominated a stone must in all cases consist of fourteen standard pounds *avoirdupois*, and the weight denominated a hundred weight must consist of eight such stones, and a ton consist of twenty hundred weight. And by *sect. 12*, all weights and measures must be stamped or marked in legible figures and letters, except (by *sect. 21*) any single weight above fifty-six pounds, such weight being the greatest of the imperial weights deposited in the Exchequer.

Appointment of Inspectors, &c.—By *sect. 17*, the justices at the quarter sessions are from time to time to determine the number of copies of the imperial standard weights and measures, which they shall deem requisite for the comparison of all weights and measures in use within their jurisdiction, and shall direct that such copies, verified and stamped at the Exchequer, shall be provided for the use of the same, and shall fix the place at which such copies shall be deposited, and shall appoint a sufficient number of inspectors of weights and measures for the safe custody of such copies, and for the discharge of the other duties thereafter mentioned, and shall allot to each inspector a separate district, and direct what reasonable remuneration shall be paid to such inspectors for the discharge of such duties as they shall have been ordered by such justices to perform; and they are empowered to suspend or dismiss any inspectors so appointed, or to appoint additional inspectors, as occasion may require.

But by *sect. 23*, no maker or seller of weights or measures, or person employed in the making or selling thereof, can be appointed an inspector; and every inspector, on his appointment, must enter into a bond in the sum of 200*l.*, for the due performance of his duty, and for the payment of all fees received by him, and for the safety of the stamps and copies of the imperial standard weights and measures committed to his charge.

In counties of cities, and counties of towns, to which a court of

quarter sessions has been granted under the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, the recorder, by *sect.* 105 of that statute, has the powers relating to inspectors of weights and measures, which are given (by the above 17th *sect.* of the 5 & 6 Will. 4, c. 63) to the magistrates in quarter session assembled, although the present jurisdiction of the recorder may be limited to a district less extensive than that, which the county of such city or town comprehended up to the time of passing those statutes (*h*).

Penalty for using improper Weights or Measures.—By *sect.* 21, every person who shall use any weight or measure, other than those authorized by the act, or some aliquot part thereof, as before described, or which has not been duly stamped, or which shall be found light, or otherwise unjust, shall, on conviction, forfeit not exceeding 5*l.*; and any contract, bargain, or sale made by any such weights or measures shall be wholly null and void; and every such light or unjust weight and measure so used, shall, on being discovered by any inspector, be seized, and, on conviction of the person using or possessing the same, shall be forfeited. But nothing in the act is to require any wooden or wicker measure used in the sale of lime, or other articles of a like nature, or any glass or earthenware jug or drinking cup, though represented as containing the amount of any imperial measure, or of any multiple thereof, to be stamped. But any person buying by any vessel represented as containing the amount of any imperial measure, is authorized to require the contents of such vessel to be ascertained by a comparison with a stamped measure, such stamped measure to be found and provided by the person who shall use such wooden or wicker measure, glass, jug, or drinking cup; and in case such person shall refuse to make such comparison, or if, upon such comparison being made, such measure, jug, or cup shall be found to be deficient in quantity, the person using the same shall be subject to the penalty imposed for using light or unjust weights or measures.

Duties of Inspectors.—By *sect.* 24, the justices at the quarter sessions shall determine on what days each inspector shall attend with the stamps and copies of the imperial standard weights and measures at each of the several market towns, and such other places as they shall deem expedient; and such inspector shall examine, compare, and stamp (if found correct) all such weights and measures

as shall be brought to him for that purpose, and perform certain other duties ; and he is also required, once in every quarter of a year, to account to the treasurer of the county for all fees received by him under the act.

Appointment of Inspectors in Towns.]—By *sect. 25*, in the town of *Berwick-upon-Tweed*, and all other places which have been, or shall be, authorized under any act of parliament to appoint inspectors of weights and measures, and in all other places which have been, or shall be, by charter, act of parliament, or otherwise possessed of legal jurisdiction, and which are provided with copies of the imperial standard weights and measures verified and stamped at the Exchequer, the magistrates of such places, or any other persons who may be so authorized as aforesaid, may appoint inspectors of weights and measures within the limits of their respective jurisdictions, which inspectors are to have the same powers as the inspectors appointed by the county justices. But nothing is to prevent the county inspectors from coming to any place within the limits of the other jurisdiction, and there inspecting and stamping the weights and measures of any person residing within the district for which such inspectors may have been appointed. But any inspector knowingly stamping any weight or measure of any person residing within the limits of any local jurisdiction, for which another inspector may have been legally appointed, shall forfeit not exceeding 20s. for every weight or measure which he may so stamp.

Power to enter Shops, &c. to inspect Weights and Measures, &c.]—By *sect. 28*, every justice of the peace, or any inspector authorized in writing under the hand of any justice, may, at all seasonable times, enter any shop, store, warehouse, stall, yard, or place whatsoever within his jurisdiction, wherein goods shall be exposed or kept for sale, or shall be weighed for conveyance or carriage, and there examine all weights, measures, steelyards, or other weighing machines, and compare and try the same with the copies of the imperial standard weights and measures ; and if, upon such examination, it shall appear that the weights or measures are light, or otherwise unjust, the same shall be liable to be seized and forfeited ; and the person in whose possession the same shall be found, shall, on conviction, forfeit a sum not exceeding 5*l.* ; and any person, who shall have in his or her possession a steelyard or other weighing machine, which shall on such examination be found incorrect or

otherwise unjust, or who shall neglect or refuse to produce for such examination, when thereto required, all weights, measures, steelyards, or other weighing machines, which shall be in his or her possession, or shall otherwise obstruct or hinder such examination, shall be liable to a like penalty.

Penalty for Neglect of Duty of Inspector.—By *sect. 29*, in case any inspector, or any other person legally authorized to examine and stamp any weights and measures, shall stamp any weight or measure, without duly verifying the same by comparison with a copy of the imperial standard, or shall be guilty of a breach of any duty imposed upon him by the act, or shall otherwise misconduct himself in the execution of his office, he is liable to a penalty not exceeding 5*l.* for every such offence.

Penalty for counterfeiting Stamps.—By *sect. 30*, if any person or persons shall make, forge, or counterfeit, or cause or procure to be made, forged, or counterfeited, or knowingly act or assist in making, forging, or counterfeiting any stamp or mark then used, or which might afterwards be used, for the stamping or marking of any weights or measures, he is liable to a penalty not exceeding 50*l.*, nor less than 10*l.* And if any person shall knowingly sell, utter, dispose of, or expose to sale any weight or measure with such forged or counterfeit stamp or mark thereon, every person so offending shall for every such offence forfeit, on conviction, a sum not exceeding 10*l.*, nor less than 40*s.* And all weights and measures, with such forged or counterfeited stamps or marks, shall be forfeited and broken up, and the proceeds thereof shall be disposed of in the manner after mentioned.

Penalty for making false Returns.—By *sect. 31*, if any person shall print, or if the clerk of any market or other person shall make any return, price list, price current, or any journal, or other paper containing price list or price current, in which the denomination of weights and measures quoted or referred to shall denote or imply a greater or less weight or measure than is denoted or implied by the same denomination of the imperial weights and measures, he is liable to a penalty not exceeding 10*s.* for every copy of every such return, price list, price current, journal, or other paper which he shall publish.

Application of Penalties.—By *sect. 32*, all penalties and forfeitures which shall be incurred under any of the provisions of the act,

or of the 5 Geo. 4, c. 74,—after deducting so much thereof, not exceeding a moiety, to be paid to the party on whose information the conviction shall take place, as the justice before whom the party is convicted shall think fit,—shall be paid to the treasurer of the county or other place in which they shall be respectively recovered, or to such other person as shall be duly authorized to receive the same, to be applied to and make part of the county stock, or of such other funds as shall be liable to the cost of providing and maintaining copies of the imperial standard weights and measures.

Recovery of Penalties.—By *sect. 33*, all penalties and forfeitures must be sued for before two justices of the peace at petty sessions, or before the mayor or other chief magistrate of any city or town within whose jurisdiction the offence shall have been committed; and the conviction may be drawn up according to the form given by the act, or in words to the like effect.

And by *sect. 34*, all such penalties and forfeitures may, in case of non-payment thereof, be recovered in a summary way by the order and adjudication of such two justices at petty sessions, or the mayor or other chief magistrate of any city or town, on complaint to them or him for that purpose made, and be levied, as well as the costs, by distress and sale of the goods and chattels of the respective offenders, by warrant under the hands and seals of such justices, or the hand and seal of such mayor or other chief magistrate. And in case any such penalty shall not be forthwith paid, the justices, mayor or other chief magistrate, may order the offender to be detained in safe custody until return can conveniently be made to such warrant of distress, unless he can give sufficient security for his appearance on such day as shall be appointed for the return of such warrant, such day not being later than eight days from the day of taking such security. But if, upon the return of such warrant it shall appear that no sufficient distress can be had whereupon to levy the penalty and costs, or in case it shall appear to the satisfaction of the justices, mayor or other chief magistrate, upon the confession of the offender, or otherwise, that he hath not sufficient goods whereupon such penalty and costs could be levied, then the justices need not issue a warrant of distress, but are required by warrant under their hands and seals to commit the offender to some common gaol or house of correction not exceeding two* calendar months, or until he shall have paid such penalty and costs.

Appeal.—By *sect. 35*, persons aggrieved may within fourteen

days after any order or judgment, appeal to the next quarter sessions, first giving seven days' notice in writing of the intention to appeal, and the grounds and notice thereof, to the party against whom such complaint is intended to be made, and forthwith entering into a recognizance, with two sufficient sureties, to try such appeal.

Proceedings not void for want of form, &c.—By sect. 36, no proceeding shall be quashed or vacated for want of form, or be removed by *certiorari*, or any other writ or proceeding whatsoever, into any court of record at Westminster. And by sects. 39 and 40, there are the usual limitation and provisions as to actions brought against persons for any thing done in pursuance of the act.

Ward Inquests in London.—By sect. 42, nothing is to interfere with the powers of the ward inquests, in respect to weights and measures within the city of London and the borough of Southwark; and the rights of the Founders' Company, and of the universities of Oxford and Cambridge are reserved by the two following sections.

Powers of Leet Jury reserved.—By sect. 45, also, nothing in the act contained is to supersede, limit, take away, lessen, or prevent the authority which any person or persons, bodies politic or corporate, or any person appointed at any court leet for any hundred or manor, or any jury or ward inquest, may have or possess, for the examining, regulating, seizing, breaking, or destroying any weights, balances, or measures within their respective jurisdiction, or the power given by any act or acts then in force to justices or other authorities to appoint examiners for the inspection of weights and measures.

Appeal to a Police Magistrate in the Metropolitan Police District.—By 3 & 4 Vict. c. 84, s. 12, all persons who may think themselves aggrieved by any presentment or proceeding of any leet jury or court leet for any hundred or manor within the metropolitan police district, or of any person or persons appointed at any such court leet, with respect to examining or regulating, seizing, breaking, or destroying any weights, balances, or measures, may, within fourteen days next after such presentment or proceeding, appeal to any one of the magistrates of the metropolitan police Courts, first giving seven days notice in writing of such intention to appeal, and of the grounds and nature thereof, to the steward of the Court, or to such other party against whom the complaint is intended to be made, and forthwith after such notice entering into a recognizance before one of the said magistrates conditioned to try the appeal, and abide the

order and award of the Court thereon. The magistrate attending at the Court, to which the appeal shall be brought, is to appoint a time for the hearing of such appeal; and the magistrate by whom the appeal shall be heard may, if he see cause, mitigate any penalty or forfeiture, and may order any money to be returned which may have been levied in pursuance of such presentment or proceeding, and also any further satisfaction to be made to the party injured as he shall judge reasonable, and also costs to be paid to the party aggrieved; such satisfaction and costs to be paid by the steward of the Court out of the first monies coming to his hands, being the produce of any fines imposed by the leet jury. It is also declared to be unlawful to distrain or proceed in any manner for the recovery of any fine or amercement imposed by any such Court Leet, or assessed by any such jury, against which notice of such appeal shall have been given, until after the judgment or order of the magistrate upon the appeal, and then only for so much as shall be allowed upon such appeal.

Conviction of a party for having false Weights in his possession, under 5 & 6 Will. 4, c. 63, s. 28 (1).

County of } Be it remembered, that on the — day of —, in the year of our
 —. } Lord 1843, A. B., of —, is convicted before us, J. P. and W. P.,
 esquires, two of her Majesty's justices of the peace in and for the said county, [or
 "before me, J. P., the mayor," or "chief magistrate of the city," or "town of
 —"] for that the said A. B., on the — day of — instant, at —, in the said
 county, had in his possession in a certain shop there of him the said A. B., in which
 goods were exposed and kept for sale, a certain false and deficient weight, intended to
 represent a pound weight, which was then and there found by C. D., an inspector
 then and there duly authorized to enter the said shop of the said A. B., and there to
 examine the said weights, and to compare and try the same with the copies of the
 imperial standard weights and measures, upon the examination of the said C. D.,
 to be light and unjust, and deficient in the proper weight thereof according to the
 imperial standard by law established; contrary to an act passed in the sixth year of the
 reign of King William the Fourth, intituled, "An Act to repeal an Act of the fourth
 and fifth year of his present Majesty, relating to Weights and Measures, and to make
 other provisions instead thereof;" And we [or "I"] do adjudge that the said A. B.
 hath forfeited for his [or "her"] said offence, the sum of 5*l.*, of which said sum we
 [or "I"] do direct that one moiety be paid to the said C. D., the party on whose
 information this conviction hath taken place, and the other moiety to E. F., the trea-
 surer of the said county for the purposes mentioned in the said act (*m*). Given under
 our hands and seals [or "my hand and seal"] the day and year first above written.

(1) See *ante*, p. 1445. This form of the penalty:
 conviction is given by the act, with the (m) As the justices have, by the 32nd
 exception of the concluding part disposing section of the above act (see *ante*, p.

Wharfs—See Docks.

Whipping.

BY 1 Geo. 4, c. 57, s. 2, the punishment of *whipping* cannot be inflicted on any female offender. But by *sect. 3*, in all cases, where such punishment had hitherto formed the whole or part of the judgment or sentence, or had in any other case been inflicted, the Court, or justice of the peace, before whom any such offender shall be tried or convicted, may pass sentence of confinement to hard labour in the common gaol or house of correction, for any space of time not exceeding six months, nor less than one month, or of solitary confinement therein for any space not exceeding seven days at any one time, in lieu of the sentence of whipping, as to the Court or justice shall seem most proper.

Wife.

THE wife of a man, committing a *theft* in his company, is so much favoured in law, that she is presumed to be acting under his coercion, and not of her own free will, and is therefore exempt from punishment(*n*). But the coercion of the husband is only a presumption until the contrary appear; for if, upon the evidence, it clearly appear, that the wife was not drawn to the offence by her husband, but that she was the principal actor and inciter of it, then she is equally responsible with her husband(*o*). And no presumption of coercion will extend to excuse the wife in cases of treason, murder, and offences *mala in se*, in all of which the wife is held to be a responsible agent. So, in every case, where the wife offends alone, without the company or coercion of her husband, she is then as much liable to punishment for her offence as any *fême sole* (*p*).

As to the admissibility of the wife's evidence for or against her husband, see *ante*, *Evidence*, p. 251.

1446), a discretionary power to give so much of the penalty as they shall think fit, not exceeding a moiety, to the informer, the form of conviction, as given by the act, would be bad, if the justices did not direct in specific terms the distribution of

the penalty; *R. v. Dimpsey*, 2 T. R. 96, and see *ante*, *Conviction*, p. 198.

(*n*) 1 Hawk. c. 1, s. 2.

(*o*) 1 Hale, 516.

(*p*) 4 Bl. Com. 29. And see further 2 Deac. Crim. L. 1377.

Wild Fowl—For taking or destroying their eggs, see *Game, ante*, p. 355.

Wills, Deeds, &c.

WILLS.]—By 7 & 8 Geo. 4, c. 29, s. 22, if any person shall, either during the life of the testator, or after his death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, the offender is guilty of a *misdemeanor*, punishable with *Transportation for seven years, or with fine or imprisonment, or both*.

Deeds.]—By *sect. 23*, if any person shall steal any paper or parchment, written or printed, or partly written and partly printed, being evidence of the title, or of any part of the title, to any real estate, the offender is liable to the same punishment.

Records.]—And by *sect. 21*, if any one shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully or maliciously obliterate, injure, or destroy any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatever of or belonging to any Court of Record, or relating to any matters civil or criminal; or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatever of or belonging to any Court of Equity, or relating to any cause or matter begun, depending, or terminated, in any such Court; the offender is also liable to be punished as above.

For forging wills and deeds, see *Forgery, ante*, pp. 308, 312.

Witness.

COMPELLING his Attendance.]—In cases of felony and misdemeanor, a magistrate has the power to compel the attendance of a witness, after his refusal to obey a summons; but it is doubtful, whether he has this power in minor offences, unless where it is specially given by act of parliament; and this is usually done by the statute, which creates the offence, imposing a penalty on a witness who refuses to attend for the purpose of being examined. A summons should, in all cases, be personally served on the witness in the first instance,

with a tender of his expenses of travelling to the place of examination, where he lives at a distance; and if the summons is disobeyed, the magistrate may then issue a warrant to enforce his attendance. But, in issuing such a warrant, the magistrate must be very careful how he words it, to avoid the risk of an action against him for any informality. The warrant should state the nature of the charge depending before the magistrate upon oath, and then, after reciting the witness's refusal to obey the summons, the constable should be required merely to bring the party before the magistrate to give evidence in the matter; when, if he refuses to be sworn, or to be bound over to give his evidence at the assizes or sessions, he may be committed for contempt. But, where a warrant directed the constable to bring the party before the magistrate, *to find sufficient bail to appear and give his evidence at the next assizes*, the Court of Queen's Bench has lately determined that the magistrate was liable in an action of trespass; for, though the magistrate may require the witness to enter into his own recognizance to appear at the sessions or assizes, he has no authority to require him to *give bail* for his appearance (*q*); the party's own recognizance, at the peril of commitment, being all that can be required (*r*).

Examination on Oath.—There can be no doubt that in all cases, where a magistrate has any jurisdiction over an offence, he has not only the power, but it is his bounden duty, to administer an oath to any witness who is produced before him for examination; notwithstanding the 15 Geo. 3, c. 39, which was passed to remove all doubts on the subject, has only served to increase those doubts, if there were any such previously existing, by strictly confining its enactments to cases of *pecuniary* penalty, and making no provision for those in which the punishment is merely *corporeal* (*s*). The oath must be administered to each witness before he is examined; and administering it afterwards is irregular; for the witness ought to be under the sanction of an oath the whole time he is giving his evidence (*t*).

Mode of Examination.—If the witness is a *Quaker* or *Moravian*, his *solemn affirmation* is (by 9 Geo. 4, c. 32) admissible, instead of an oath; and by the 3 & 4 Will. 4, c. 82, the same privilege is accorded to the people called *Separatists*.

The examination of the witness should be taken, as well as the

(*q*) *Evans v. Rees*, 12 Ad. & E. 55.

(*r*) *Per Graham, B.*, Bodmin Summer Assizes, 1817, 1 Chetw. Burn's J. 1013.

(*s*) See Paley on Convictions, Deacon's edit. 43.

(*t*) *R. v. Kiddy*, 4 Dowl. & Ry. 734.

oath or affirmation administered, in the presence and hearing of the magistrate (*u*); for, where the deposition of a witness was taken by a magistrate's clerk in an upper room, the magistrate remaining below, and not at any time seeing, examining, or hearing the deponent, the deposition was held irregular, and no justification of subsequent proceedings founded upon it (*x*).

The witness also should be sworn and examined in the presence of the accused party, in order that he may have an opportunity of cross-examining the witness (*y*); or, if the evidence has been taken down in his absence, and is read over to him afterwards, the witness must at the same time (unless the defendant upon hearing the evidence should confess (*z*) the fact deposed to) be resworn in his presence, and not merely called upon to assert the truth of his former testimony (*a*). The answers to the questions put to the witness should, as they are given, be immediately put into writing in a plain and intelligible manner, and as nearly as possible in the very words used by the witness; and when the examination is finished, it is usually read over and tendered to the witness for his signature; though such signature is not absolutely necessary, but is only taken for precaution and the facility of future proof (*b*).

Commitment for Contempt.—Where a witness pertinaciously and wilfully refuses to answer a question relating to a fact which must be necessarily within his knowledge, it seems that a magistrate may commit him for contempt; upon the principle, that wherever a magistrate is empowered by law to cause a person to do a certain thing, and such person, upon being required in his presence, shall refuse to do it, the justice may commit him to gaol until he shall comply (*c*). But, to render such a commitment legal, the question must be one which the witness is lawfully compelled to answer; and the warrant of commitment must show that there was some person lawfully charged before the magistrate with an offence, and that the witness was apprised of the fact and the nature of the charge (*d*).

Credibility of the Witness.—Where a statute, which is generally the case where it imposes a penalty, directs the conviction to be upon the testimony of a *credible* witness, the word "*credible*" is equivalent to

(*u*) *R. v. Glossop*, 4 B. & Ald. 616.

(*x*) *Cundle v. Seymour*, 1 Q. B. Rep.

889,

(*y*) *R. v. Vipont*, 2 Burr. 1165.

(*z*) *R. v. Hall*, 1 T. R. 320.

(*a*) *R. v. Crowther*, 1 T. R. 125.

(*b*) *R. v. Flemming*, 2 Leach, 854.

(*c*) 2 Hawk. c. 16, s. 2; *Bennet v. Watson*, 3 M. & S. 1.

(*d*) *Cropper v. Horton*, 4 Dowl. & Ry. Mag. Ca. 42; 8 Dow. & R. 166.

competent; and therefore such a witness only can be properly received, as is capable of being examined in a court of justice (e). And see further as to the *competency* of witnesses, title *Evidence*, ante, 250.

1. Summons of a Witness.

County of }
 ——— } To the constable of ———.

Whereas information upon oath hath been made before me, J. P., esquire, one of her Majesty's justices of the peace for the said county, that A. B. late of, in the county aforesaid, on, &c. at, &c. [*describing the offence generally, as in a warrant of apprehension*], and that C. D. of, &c. is a material witness to be examined concerning the same: These are therefore to require you to summon the said C. D. to appear before me, at ———, in the said county, on the ——— day of ———, at the hour of ——— in the ——— noon of the same day, to testify his knowledge concerning the premises. Herein fail you not. Given under my hand and seal the ——— day of ———, in the year of our Lord 1843.

J. P.

2. Deposition of a Witness.

County of } The examination of C. D. of ———, labourer, taken on oath this ———
 ———. } day of ———, in the year of our Lord 1843, before me, J. P., esquire, one of her Majesty's justices of the peace in and for the county aforesaid, in the presence and hearing of A. B. charged this day before me, for that he the said A. B. on, &c. at, &c. [*describing the offence generally, as in a warrant of apprehension*]; which said C. D. saith as follows: [*here state the evidence given by the witness, as nearly as possible in his own words; and it is proper, though not essential, that he should sign his name to the deposition.*]

Taken before me, the day and
 year first above written,

C. D.

J. P.

For the form of a recognizance to give evidence, which must be without sureties, see *Recognizance*, ante, 1025.

Woollen Manufacture.

FOR the regulation of children employed in woollen manufactories, see *Factories*.

For stealing from woollen manufactories, see *Manufactories*.

For regulations as to workmen employed in woollen manufactories, see *Servants and Workmen*, p. 1079.

Frauds in dyeing Woollen Cloth.—By the 23 Geo. 3, c. 15, various penalties are imposed for improperly dyeing, or not properly

(e) 7 Bac. Abr. tit. Wills, 328; Paley on Convictions, Deacon's edit. 46.

marking woollen cloth, and for obstructing searchers appointed under the provisions of the act; all which penalties, not exceeding 5*l*., may be recovered before one justice, by distress, in default of which the offender may be committed to the house of correction to hard labour, not exceeding three months, subject to the right of appeal to the next quarter sessions.

Penalty for having in possession stolen Cloth, &c.—By the 15 Geo. 2, c. 27, s. 1, in case any cloth remaining upon the rack or tenters, or any woollen yarn or wool left out to dry, shall be stolen or taken away in the night-time, one justice may, upon complaint made by the owner within ten days, issue a warrant to search the premises of the persons whom the owner of the cloth suspects to have stolen, taken away or received the same; and in case the constable shall find any cloth which he shall have reason to suspect to be stolen, he shall forthwith apprehend the party in whose possession the same shall be found, and carry him before a justice; and if he shall not give a satisfactory account of the property, or produce the party from whom he received it, he shall be deemed and adjudged as convicted of the offence of stealing or taking away the said cloth, and shall for the first offence pay treble the value, to be levied by distress, in default of which the offender may be committed to the common gaol for three months; for a second offence, over and above the forfeiture of actual value, he is to be committed for six months; and for a third offence, the justice is to commit him for trial at the next assizes or sessions, when, if the party shall not produce the person from whom he acquired the possession of the cloth, or otherwise prove that he lawfully obtained the same, he shall be adjudged guilty of felony, and suffer *Transportation for seven years*.

By *sect. 2*, an *appeal* is given to the next quarter sessions.

Yorkshire Cloth.—By 11 Geo. 2, c. 28; 5 Geo. 3, c. 51; 6 Geo. 3, c. 23; and 49 Geo. 3, c. 109, various provisions are made as to the appointment and duties of searchers, inspectors, and supervisors of woollen cloths in the West Riding of Yorkshire, and for the fulling, milling, drying, marking, measuring, and stamping of the cloths there manufactured; and various penalties are imposed for the breach of the different regulations contained in those acts, which may be enforced in the usual way, on summary conviction before a magistrate, by distress, and commitment in default of distress, subject to an appeal to the next quarter sessions.

By 49 Geo. 3, c. 109, s. 5, certain privileges were granted to per-

sons who had served an apprenticeship to any branch of the woollen manufacture, as to the free exercise of other trades in any town; but these are now superseded by the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, s. 14, which abolishes the exclusive right of trading in all towns by established custom.

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Workhouses—See **Poor**, *ante*, p. 731.

—♦—
Workmen.

FOR the jurisdiction of magistrates, as to the misbehaviour of workmen, and the settlement of differences between them and their masters, see **Servants and Workmen**, *ante*, p. 1079.

—♦—
Worship--For disturbance of divine worship—See **Church**,
Dissenters.

—♦—
Wreck—For offences connected with the wreck or destruction of ships, see **Ships**, *ante*, p. 1136.

—♦—
Yeomanry—See **Volunteers**.

A D D E N D A.

Action.

Page 7. *Where it lies against a Justice.*—Where a deposition was taken by a justice's clerk, the justice not being present, nor at any time seeing, examining, or hearing the deponent, and the justice thereupon issued a warrant, commanding a constable to apprehend and bring before him the body of A. B. to answer all such matters as on her Majesty's behalf should be objected against him on oath by C. D., for an assault committed on C. D.; it was held, that an action of trespass lay against the justice, as the deposition was irregular, and the warrant did not show any information on oath.—*Caudle v. Seymour*, 1 Q. B. Rep. 889.

Alehouses.

Page 20. *Transfer of Licence.*—By 5 & 6 Vict. c. 44, s. 1, the majority of justices present at any petty sessions, at any time when no special sessions shall be holden for the division, may, upon application made to them, by indorsement under their hands and seals on any licence previously granted, authorize any person not disqualified, to whom it shall be proposed to transfer or grant any such licence, to use, exercise and carry on the business of a licensed victualler at the same house and on the premises, and there to sell such excisable liquors as might theretofore have been lawfully sold and retailed therein; and thereupon the officer of excise, empowered to transfer licences by indorsement, may give the like authority to the person so authorized by the justices. The authority so given shall be in force until the then next special sessions, when the justices then assembled shall hear and dispose of the application for such transfer. But this power given to the petty sessions does not extend to any of

the divisions assigned to the Metropolitan Police Courts (except in the borough of Southwark), where the application, instead of being made to the petty sessions, must be made to one of the police magistrates.

By *sect. 2*, when it shall be proved that the licence has been lost or mislaid, the justices may receive a copy of it, certified to be a true copy under the hand of the clerk to the licensing justices, and may make the indorsement of transfer on the copy. By *sect. 3*, a fee of 2*s. 6d.* is allowed upon every certified copy, and every such indorsement.

By *sect. 4*, no justice can act upon any such application at the petty sessions, who is disqualified from acting at the general annual licensing meeting, under the same penalty as is imposed by the 9 Geo. 4, c. 61.

Page 25. *Appeal.*—A licensed victualler, convicted by two justices under the 9 Geo. 4, c. 61, s. 21, of an offence against the tenor of his licence, cannot be heard on appeal to the quarter sessions under *sect. 27*, unless he has served notice of such appeal on both the convicting justices. And this, although at the time of giving notice the conviction had in fact been signed only by one justice; at least, if there be no proof that the conviction so signed was communicated to the appellant before he gave notice, so that he might have been misled thereby.—*Reg. v. Cheshire Justices*, 11 Ad. & E. 139.

Under the 9 Geo. 4, c. 61, s. 27, an appeal lies to the county quarter sessions against the refusal of justices in special sessions to grant an alchouse licence. But the recorder of a borough, having a separate court of quarter sessions under the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, s. 103, cannot try an appeal against such refusal, that power being withheld from him by *sect. 105*. An appeal, therefore, from the refusal of the borough justices may still be tried at the county sessions.—*Reg. v. Deane*, 2 Q. B. Rep. 96.

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Appeal—And see Alchouse, Corporation, Poor.

Page 34. *Notice.*—Where a statute gives an appeal to a party aggrieved, the notice of appeal must either state that the party was aggrieved, or else show some grievance on the face of it.—*R. v. Bond*, 6 Ad. & E. 905.

Where notice of appeal is required to be served upon the convicting justices, it is not sufficient to serve a notice on one of the

justices addressed to both, although that justice may have transmitted the notice to the clerk of the special sessions, with an observation to him that he well knew how to act upon it.—*Reg. v. Bedfordshire Justices*, 11 Ad. & E. 134.

Page 34. *When given.*—An appeal cannot be given by implication, only. Therefore, where a footway in a churchyard was stopped up under the provisions of the Church Building Act, 59 Geo. 3, c. 134, s. 39, which directs notice to be given in the manner and form prescribed by the 55 Geo. 3, c. 68, sched. A.; it was held, that this reference to the last-mentioned act did not give an appeal to the sessions, notwithstanding the form of the notice given by the last-mentioned act stated, that the order would be confirmed at the sessions, unless “upon an appeal against the same to be there made,” it be otherwise determined.—*Reg. v. Stock*, 8 Ad. & E. 405.

Apprentices.

Page 55. *Misbehaviour of the Apprentice.*—By 5 & 6 Vict. c. 7, all the powers and provisions contained in the 20 Geo. 2, c. 19, 32 Geo. 3, c. 57, 33 Geo. 3, c. 55, and 4 Geo. 4, c. 29, are declared to extend to apprentices, where no sum or premium has been paid on the binding of the apprentice.

Attorney.

Page 78. By 6 & 7 Will. 4, c. 114, s. 2, in all cases of summary conviction, persons accused shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

Bastard.

Page 83. *Application for Order.*—The guardians of an union are the proper parties to apply for an order in a bastardy case, under 2 & 3 Vict. c. 85.—*Reg. v. Wiltshire Justices*, 12 Ad. & E. 793.

Page 85. *Notice.*—The notice under the 4 & 5 Will. 4, c. 76, s. 73, must be signed by a majority of the aggregate body of churchwardens and overseers; therefore, such a notice signed only by two overseers of a parish, which has also two churchwardens, is bad.—*R. v. Justices of Cambridgeshire*, 7 Ad. & E. 480.

But a notice signed by the churchwardens and overseers of the

parish is sufficient, though the parish is part of an union under *sect. 26* of the 4 & 5 Will. 4, c. 76, and none of the guardians have signed it. *Reg. v. James*, 10 Ad. & E. 423.

But if it be objected that an assistant overseer of a township did not sign such notice, the party objecting must show, from the nature of his appointment, that it was his duty to sign. In a township maintaining its own poor, and having a church and churchwardens of its own, the churchwardens of the township are not, by virtue of their office, like those of a parish, overseers of the poor.—*Rex v. Justices of North Riding of Yorkshire*, 6 Ad. & E. 863.

Where an application is made to the petty sessions for a bastardy order, under the 2 & 3 Vict. c. 85, s. 1, and the putative father desires that the charge should be heard at the quarter sessions, and thereupon binds himself in a recognizance to appear there to answer the charge, no further notice need be given to him before such hearing. And when at the petty sessions he does not object to the want of the seven days' notice under *sect. 1*, he cannot afterwards object to the want of such notice at the quarter sessions; for the appearance and proceedings at the petty sessions cure the defect.—*Reg. v. Wiltshire Justices*, 12 Ad. & E. 793.

Page 85. *Order.*—An order of maintenance on the father, under *sect. 72* of 4 & 5 Will. 4, c. 76, need not show, on its face, that the application was made to the next practicable quarter sessions after the child had become chargeable, but was held good, when it purported to be made at the sessions held 29th June, 1837, and stating that the child, on the 6th March then last, by reason of the mother's inability, became and thence had been and still was chargeable. The order recited as follows: "It being now duly proved to this Court, &c." that the child was on, &c. at the parish aforesaid, born a bastard of the body of E. J. (not giving any further account of her); and on, &c. by reason of the inability of the mother to provide for its maintenance, became and from thence hath been and still is chargeable to the said parish; "and that he the said R. L. is the father," and the evidence of E. J. having been corroborated, &c., and the Court "*having heard all parties, and being satisfied that the said R. L. is really and in truth the father of the said child, and it appearing to this Court to be just,*" &c. that R. L. should pay, &c.; the order then proceeded, "This Court doth therefore hereby order that the said R. L. do forthwith pay," &c. The order was held good under 4 & 5 Will. 4, c. 76, ss. 71, 72, without any statement

as to the mother's settlement, or any more express adjudication than that R. L. was the father.—*Reg. v. Lewis*, 8 Ad. & E. 881.

An order for the maintenance of a bastard is bad, if it allege that the justices heard evidence in corroboration of the mother's statement, without adding that the corroboration was in some material particular.—*Reg. v. Read*, 9 Ad. & E. 619.

Page 84. *Appeal.*—When an order of maintenance on the putative father of a bastard has been duly made at the petty sessions, under the 2 & 3 Vict. c. 85, s. 1, the party charged not requiring the original charge to be heard at the quarter sessions, under *sect. 3*, no appeal from such order lies to the quarter sessions, under the 4 & 5 Will. 4, c. 76, s. 103. And if the party charged require the cause to be originally heard at the quarter sessions, no appeal lies from the order made by the quarter sessions, on such hearing, to another quarter sessions.—*Reg. v. West Riding of Yorkshire Justices*, 1 Q. B. Rep. 325.

Page 85. *Costs.*—The quarter sessions have no power, under the 4 & 5 Will. 4, c. 76, or the 2 & 3 Vict. c. 85, to adjudge that a putative father shall pay the costs of bringing the charge before the Court.—*Reg. v. Wiltshire Justices*, 12 Ad. & E. 793.

By a rule of quarter sessions it was ordered, that all applications intended to be made for orders of maintenance in bastardy should be entered with the clerk of the peace on or before a certain day, and that such applications should be called on at the sessions in the order of entry. The overseers of a parish entered an application with the clerk of the peace, according to the above rule and the practice of the sessions, paying the usual fee on entry, and giving notice to the party against whom they applied. He attended at the sessions, and the case was called on, but the prosecutors did not appear. The sessions made no order upon the application; but, under the 4 & 5 Will. 4, c. 76, s. 73, ordered that the overseers should pay costs to the party appearing. Held, that the entry was an application, and the calling on of the case, and attendance of the opposing party, a hearing of such application, within *sect. 73*, and therefore that the order for costs was rightly made.—*Reg. v. Stumper*, 1 Q. B. Rep. 119.

Page 86. *Where Payments in arrear.*—Under the 49 Geo. 3, c. 68, s. 3, where payments were in arrear, it was held that a magistrate was bound to enforce the order by commitment, on proof that

the sum was in arrear, and the child chargeable; and that he had no jurisdiction to inquire whether the sum was too large, or whether it was likely to be all applied to the maintenance of the child.—*Reg. v. Codd*, 9 Ad. & E. 682.

Requisites of Order of Quarter Sessions.—An order of quarter sessions recited, that the guardians of a certain union had applied to the court for an order of maintenance on S. R., the putative father of a bastard child; that the said S. R. had appeared by attorney at the hearing; that the court had proceeded to hear the evidence, and, not being satisfied therewith, had refused to make an order on S. R.; and it then directed payment by the guardians of a certain sum, being the costs incurred by S. R. in resisting the application. Held, that the order was bad, for not showing, on the face of it, that the application had been first made to the petty sessions, under the 2 & 3 Vict. c. 85, and that the case was transmitted thence to the quarter sessions.—*Reg. v. Hartley Wintney Union*, 1 Q. B. Rep. 677.

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Certiorari.

Page 134. *Where not taken away.*—Where an act gave an appeal, but took away the *certiorari*, and at the trial of the appeal, three justices who were interested in the matter voted in the determination of it; it was held, that, as a question in the cause had been decided by a court improperly constituted, on account of the interest of the three magistrates, the clause prohibiting the *certiorari* did not operate; and the Court of Queen's Bench had the order of sessions brought up by *certiorari*, and quashed it, on affidavit of the above facts, although the affidavits did not satisfy the court that the magistrates had voted partially. But if a party to the appeal, knowing of the interest, expressly or impliedly assent to the interested magistrate acting, such party cannot afterwards make the objection.—*Reg. v. Cheltenham Commissioners*, 1 Q. B. Rep. 467.

Page 135. *Notice.*—The notice to justices of an application for a *certiorari* to bring up their order should state, that the notice is given by the party suing forth the *certiorari*, and should specify the party. And upon such application, the party suing forth the writ should be identified, on affidavit, with the prosecutor named in the notice, and the justices therein named with those on whom notice has been served. It is not enough, that the party giving the notice is the only person making affidavit in support of the rule on the merits;

or that, from such affidavit, it appears that no order was made by justices of the same name as those to whom the notice is given, and was of the same date and to the same effect as that described in the order and the rule *nisi*. The objection to the notice is not cured by the rule *nisi* being enlarged by consent.—*Reg. v. How*, 11 Ad. & E. 159. But a notice subscribed by A. B., “solicitor for C. D.,” the party intending to move, and in other respects regular, is sufficient to authorize the motion; though the notice do not expressly state that C. D. is suing forth the *certiorari*, and there be no affidavit that the notice is in fact served at the instance of C. D., if the justices show cause, and do not offer affidavits to the contrary.—*Reg. v. Lancashire Justices*, 11 Ad. & E. 144.

Page 136. *Recognizance*.]—The enactment of the 5 Geo. 2, c. 19, s. 2, that orders of justices shall not be removed by *certiorari*, unless a recognizance be given by the party removing, does not apply to a writ of *certiorari* sued out by a prosecutor. And, therefore, where a conviction had been quashed by order of sessions, and the informer obtained a *certiorari* to remove such order, the Court of Queen’s Bench refused to quash the writ, on the ground that no recognizance had been given.—*Reg. v. Spencer*, 9 Ad. & E. 485.

Church Rate.

Page 151. *Power of Churchwardens*.]—Although parties are unduly elected churchwardens, yet if they are admitted and sworn in, and act, they may convene a vestry for levying a church rate; and a rate laid at such a vestry is valid. They may also complain of the non-payment of it, under the 55 Geo. 3, c. 127, s. 7, so as to give justices of the peace jurisdiction, the sum not exceeding 10*l*. And if proceedings against a person rated be commenced in the Ecclesiastical Court to enforce a rate, and afterwards abandoned, the same person may afterwards be summoned before justices, under the 53 Geo. 3, c. 127, s. 7, and be ordered by them to pay the rate.—*Reg. v. St. Clements*, 12 Ad. & E. 177.

Where the churchwardens duly convene a parish vestry, and propose a rate for the necessary repairs and expenses of the parish church, which a majority of the assembled parishioners then refuse to make; a rate made by the churchwardens alone at a subsequent day and meeting, not being a parish meeting, is illegal and void.—*Burder v. Veley*, 12 Ad. & E. 233.

But the obligation of parishioners to repair the body of the parish church is by the common law, and is not qualified or voluntary, but absolute and imperative; and when repairs are needful, the only question on which the parishioners in vestry can by law deliberate is, how the obligation may be best, most effectually, and most conveniently and fairly between themselves, carried into effect.—*Veley v. Burder, in error*, 12 Ad. & E. 265.

Rateability.—Where a local act declares that a church rate shall be laid “upon all persons, inhabitants, and occupiers of lands, tenements, hereditaments, and premises within the parish;” all occupiers, though not being resident inhabitants, or occupying beneficially, are liable to the rate; and therefore the treasurer of a charitable society, (as representing the society,) who held premises on lease, and occupied them merely for the purposes of the society, without deriving any profit therefrom, was properly rated.—*Reg. v. Wilson*, 12 Ad. & E. 94.

Mandamus.—Where a charter, or act of parliament, gives certain property to churchwardens, in trust out of the revenues to pay certain salaries, and to repair the parish church, a mandamus lies to compel them to make a rate for those purposes.—*Reg. v. St. Saviour's, Southwark*, 7 Ad. & E. 925.

Where an act of parliament directs a select vestry (created by the act) to levy church rates, the Court of Queen's Bench will compel them by *mandamus* to levy the rate, and will not confine the writ to ordering them to assemble for the purpose of determining whether they will levy the rate, or not. And this, although the act contain a clause reserving all ecclesiastical jurisdiction, if it appear from the rest of the act, that the temporal court was intended to have at least concurrent jurisdiction. The churchwardens required the select vestry to levy the rate, or to do another act, which last was illegal; held, nevertheless, a good demand of the rate. The select vestry adjourned from time to time, on pretences, which the churchwardens alleged upon affidavit to be, as they believed, colourable, and merely intended to evade laying the rate, requiring details which could not be furnished for want of funds to pay a surveyor, and fixing an adjournment day, after which a *mandamus* could not have been obtained for some months. It appearing that a previous select vestry had pursued the same course, and the present select vestry not satisfactorily denying the imputed motives, the Court held the adjournment colourable, and equivalent to a refusal.—*Reg. v. St. Margaret*,

Leicester, Select Vestry, 8 Ad. & E. 889. But the select vestry are not compellable to make a church rate, upon demand of the churchwardens, while the latter refuse to state the necessary amount, or to furnish any estimate of it, or to give to the vestry any information whereby they might ascertain it.—*Reg. v. St. Margaret, Leicester*, 10 Ad. & E. 730.

Loans.—The churchwardens cannot, under 59 Geo. 3, c. 134, s. 14, raise a loan on the credit of the church rates to pay a debt for repairs, incurred in a past year. The loan ought to be raised when the repairs are done, and the laying of rates for the repayment should commence immediately, and be continued so as to pay off the debt by ten annual instalments.—*R. v. Dursley*, 5 Ad. & E. 10.

Appeal.—A party appealing against the payment of a church rate, under the 53 Geo. 3, c. 127, s. 7, need not give notice of appeal to the justices making the order, but it is sufficient to give it to the churchwardens. And if such service to the justices were necessary, service of it upon one of the justices would suffice.—*R. v. Justices of Staffordshire*, 4 Ad. & E. 842.

Jurisdiction of Justices.—Under the 53 Geo. 3, c. 127, s. 7, which enables justices of the peace to adjudicate on charges of non-payment of church rates, “upon the complaint of any churchwarden or churchwardens, who ought to receive and collect the same,” the justices may act upon the complaint of one churchwarden, though in a parish having ten.—*Reg. v. Fenton*, 1 Q. B. Rep. 480.

Commitment.

Page 174. *In Execution.*—Where two justices convicted a man for embezzling articles of silk manufacture, under the 17 Geo. 3, c. 56, s. 2, and sentenced him to eleven weeks imprisonment, upon which he gave notice of appeal, and was committed for not entering into the proper recognizance, and he was inadvertently discharged by the sessions, as no appeal had been entered; the Court of Queen’s Bench considered it very doubtful, whether the convicting magistrates had any longer power to commit in execution of the conviction.—*R. v. Tryford*, 5 Ad. & E. 430.

Page 176. *To what Prison.*—The Court of Aldermen of the city of London have no power, under the 4 Geo. 4, c. 64, ss. 4, 12, and 13, to exclude from the gaol of Newgate prisoners committed

by Middlesex magistrates, and who might have been committed there previously to the passing of that act.—*R. v. Cope*, 6 Ad. & E. 226.

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Constable.

Page 181. *High Constable.*—The election of a chief constable for a wapentake, in the West Riding of Yorkshire, having been made at a petty sessions of the justices usually acting for the wapentake, without notice to the other justices of the riding, it was held that such election was void, and that he ought to be elected at the general quarter sessions.—*Reg. v. Wilkinson*, 10 Ad. & E. 288.

Parish Constables.—By 5 & 6 Vict. c. 109, s. 1, on some day after the 24th March and before the 9th April, in each year, the justices of the peace of every county in England must hold a special petty sessions of the peace in their several divisions, for the appointment of parochial constables, of which session due notice must be given to every justice usually acting in that division.

Justices' Precept.—By *sect. 2*, two justices are required, within the first seven days of February, to issue a precept to the overseers of each parish within the division, requiring them to make out, before the 24th March, a list in writing of a competent number of men qualified and liable to serve as constables; and with such precept notice is to be given to the overseers of the time and place of holding the special session.

Overseers to make Lists.—By *sect. 3*, the overseers, after the receipt of such precept, are to summon a vestry within fourteen days, and the vestry are to make out a list of men qualified and liable to serve, with the christian and surname, true place of abode, title, quality, calling, or business of each, and they may annex to such return the names of any number willing to serve, although not qualified.

By *sect. 4*, the justices at a special petty sessions before the issuing of the precept (of which due notice shall be given to every justice acting within the district), may make an order for uniting parishes, or annexing any extra-parochial place to a parish, for the purposes of the act, a copy of which order must be served on the overseers of each such parish or place, with the above precept; and the inhabitants of such parish or place may afterwards vote at the vestry of the parish to which they are so united.

Qualification of Constable.—By *sect. 5*, every able-bodied man

resident within the parish, between the ages of twenty-five years and fifty-five years, rated to the relief of the poor, or to the county rate, on any tenements of the net yearly value of 4*l.* or upwards, except such persons as shall be exempt or disqualified as, hereinafter mentioned, shall be qualified and liable to serve as constable of that parish.

Exemptions.].—By *sect. 6*, all peers, members of parliament, judges of the Courts at Westminster, justices of the peace, deputy lieutenants, clergymen in holy orders; priests of the Roman Catholic faith, who shall have duly taken and subscribed the oaths and declarations required by law; persons who shall teach or preach in any congregation of Protestant Dissenters, whose place of meeting is duly registered, and who shall follow no secular occupation except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declarations required by law; schoolmasters; serjeants and barristers at law, actually practising; members of the society of doctors of law, and advocates of the civil law, actually practising; attornies, solicitors, and proctors duly admitted in any court of law or equity, or of ecclesiastical or admiralty jurisdiction, actually practising, and having duly taken out their annual certificates; conveyancers, and special pleaders below the bar; officers of any such Courts, actually exercising the duties of their respective offices; coroners, gaolers, and keepers of houses of correction; members and licentiates of the Royal College of Physicians in London, actually practising; all surgeons, being members of one of the royal colleges of surgeons in London, Edinburgh, or Dublin, and actually practising; apothecaries, having obtained a certificate to practise as an apothecary from the master, wardens, and society of apothecaries of the city of London, and actually practising; officers in her Majesty's navy or army on full pay; all persons enrolled and serving in any corps of yeomanry under officers having commissions from her Majesty, or lieutenants of counties, or others specially authorized by her Majesty for that purpose; all pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service, employed by either of those corporations; and all pilots licensed by the lord warden of the Cinque Ports, or under any act of parliament or charter for the regulation of pilots in any other port; all the household servants of her Majesty; all officers of customs and excise; all sheriffs and sheriffs' officers; all high constables; the clerks of all boards of

guardians of the poor, established under the act for the amendment and better administration of the laws relating to the poor in England and Wales; the masters of all union workhouses; county or district constables; parish clerks; registrars and superintendent registrars of births, deaths, and marriages; and all churchwardens, overseers, and relieving officers; are declared to be freed and exempt from serving the office of constable under the act.

Who disqualified.—By sect. 7, all licensed victuallers, and persons licensed to deal in any exciseable liquors, or to sell beer by retail; all gamekeepers; and all persons who have been attainted of any treason or felony, or convicted of any infamous crime; are declared to be disqualified.

Lists to be fixed on Church Door.—By sect. 8, on the first three Sundays in March, the overseers are to fix a true copy of the list on the principal door of every church, chapel, or place of religious worship within their parish, with a notice that all objections to the list will be heard by the justices at a certain time and place; and they must keep the original list for the inspection of the inhabitants during the three weeks, and then return it to the justices.

Penalty for default of Overseers.—By sect. 9, every overseer who shall neglect or refuse to sign and return such list, or to make out, sign, and publish such true copies as aforesaid, or who shall knowingly leave out the name of any person who ought to be included therein, or who shall knowingly make a false return of any particular, which ought to be comprised therein, shall, upon conviction thereof before two justices, forfeit and pay for every such offence not more than 5*l*.

Overseers to attend the Special Sessions.—By sect. 10, the overseers must attend the special session to be holden for the appointment of constables in their parish, and then and there verify the list so returned by them, and answer on oath such questions touching the same as shall be put to them by the justices; and if any man not qualified and liable to serve as constable is inserted in any such list, the justices, upon being satisfied by the oath of the party complaining, or upon other proof, or upon their own knowledge, that he is not qualified and liable to serve, may strike his name out of such list, and also strike thereout the names of men disabled by lunacy or imbecility of mind, or by deafness, blindness, or other infirmity of body, from serving; and when every such list shall be

duly corrected at such session, or at any adjournment thereof, it shall be allowed by the justices present, or two of them, who shall sign the same, with their allowance thereof.

Justices to choose Constables.—By *sect. 11*, when any list shall have been allowed, the justices shall choose therefrom the names of such number of persons as they shall deem necessary (having regard to the extent and population of the parish), to act as constables within the parish during the year then next following, and until other constables shall be chosen and sworn to act in their stead as constables for such parish. But where any person shall have been chosen to serve, and shall have served the office of constable, either in person or by substitute, he shall not be liable to be again chosen, until every other person in the parish liable and qualified to serve shall have also served the office, either in person or by substitute.

By *sect. 12*, the constables are to be sworn to execute their office. And if any one shall be unwilling to serve, and shall find a substitute, to be approved by the justices, then he may be sworn in his stead. But the service of such substitute is not to be reckoned as his own service, so as to exempt him from being afterwards chosen to serve.

Penalty for refusing to serve.—By *sect. 13*, every person qualified and liable to serve, and who shall be chosen by the justices, and shall be duly summoned to be sworn, and to take upon him the office, and who shall refuse, or without reasonable cause, to be allowed by the justices, neglect to attend and to be sworn as constable, or to find a qualified substitute to be sworn in his stead, shall, upon conviction thereof before two justices, forfeit and pay any sum not more than 10*l.*; and every person, who, after being sworn as constable, shall refuse or wilfully neglect to act in the execution of his office, shall, upon conviction thereof before two justices, forfeit and pay not more than 5*l.*

Publication of Lists.—By *sect. 14*, within fourteen days after the appointment of the constables, the clerk to the justices is to send to every justice acting within the division, and also to the clerk of the peace, for the purpose of being laid before the next quarter sessions, a list of all the constables appointed in the division; and the overseers are to affix to the door of their respective parish churches a list of the names of the constables appointed.

Power of Constables.—By *sect. 15*, the constables shall have

within the whole county, and also within all liberties and franchises, and detached parts of other counties situate therein, and also in every county adjoining to the county in which they are appointed, all the powers, privileges, and immunities, and shall be liable to all the duties and responsibilities, of a constable within his constablewick; but shall not be bound to act as a constable beyond the parish for which they are severally appointed and sworn, without the special warrant of a justice of the peace. But in those counties in which any chief constable or superintendent shall have been appointed under the authority of the 2 & 3 Vict. c. 93, the constables appointed under this act, for any parish within the district of such chief constable or superintendent, shall be subject to his authority.

Provision in case of Vacancy.—By sect. 16, in case of the death or disqualification of any constable during his year of office, of which the overseers shall forthwith give notice to a justice of the peace usually acting for the division, or in case any person who shall have been chosen constable shall refuse or neglect to attend and be sworn, or to find a qualified substitute to be sworn in his stead, and shall have been fined for such refusal or neglect, the person who has last served, and shall not then be disqualified or exempt, shall be bound to act in his stead, until another constable shall be appointed and sworn to act for the remainder of the year, which shall be done at the next petty sessions of the peace for the division, of which notice shall be given to all the justices usually acting for the division. In case the constable making the vacancy was serving as substitute for some other person, the justices shall summon the person originally chosen to attend and be sworn, or to find another substitute duly qualified to serve for the remainder of the year; or if the person originally chosen shall be then disqualified, or shall have refused or neglected to attend and be sworn, or to find a substitute, or if the constable making the vacancy was serving after having been chosen, and not as a substitute, the justices at such sessions shall choose another qualified person out of the allowed list then in force, to serve the office of constable during the remainder of the year, and shall proceed in all respects as in the original appointment of constables for that year; and the person so chosen shall be bound in like manner, and subject to the same penalty, to attend and be sworn, or to find a substitute to be sworn in his stead to serve for the remainder of the year; and if less than 200 days shall have elapsed since the first appointment of constables for that year, but not otherwise,

the service of the person appointed to act for the remainder of the year shall be reckoned to him as service for that year; and in the first year after the passing of the act, the justices at the time of first choosing constables, shall also choose substitutes to serve, in case of vacancies during the year of office, until another appointment shall be made.

Fees and Allowances.]—By *sect. 17*, the justices at the quarter sessions are, subject to the approval of the secretary of state, to settle tables of fees and allowances to the clerks to the justices for the performance of their duties under this act, and to the constables for the service of summonses and execution of warrants, and for the performance of such other occasional duties which may be required of them, for which the justices shall think that fees ought to be allowed. Whenever any duty, for which any such fee or allowance shall have been settled, and for which the payment is not by law charged upon the county rates, shall have been performed by any clerk or by any constable appointed under the act, the amount of the fee or allowance shall be paid by the overseers of the parish, in respect of which such fee has become payable, out of any monies in their hands collected for the relief of the poor, upon the order of the justices in petty sessions assembled for the division, and under such regulations as shall be made from time to time by the justices in general or quarter sessions assembled, subject to the approval of the secretary of state.

Vestry may resolve to have paid Constables.]—By *sect. 18*, the vestry assembled for the purpose of making such return as aforesaid may resolve, that one or more paid constables shall be appointed for their parish; and if the vestry shall so resolve, a copy of the resolution, and of the amount of salary which the vestry shall resolve on paying to such constable or constables, shall be sent by the overseers to the justices with the return before mentioned.

Justices to appoint paid Constables.]—By *sect. 19*, the justices at the sessions of the peace holden for the appointment of constables, upon receiving from any parish a copy of any such resolution, if they shall be satisfied with the amount of salary agreed to be paid, shall appoint so many paid constables to act for that parish as shall be agreed to by the resolution, or if the same resolution shall have been agreed to by more parishes than one adjoining each other, may, if they shall think fit, appoint the same paid constables to act con-

jointly for all such last-mentioned parishes; and in every parish in which a paid constable shall be appointed under this act, the justices, if they shall think fit, need not appoint any unpaid constable, or may appoint a smaller number of them than they had otherwise resolved on appointing for that parish. Every paid constable shall hold his appointment until he shall resign, or be dismissed for misconduct by the justices of the division in petty sessions assembled, or until the vestry shall rescind the resolution for his appointment at any meeting of vestry holden for making such return.

Salary out of Poor Rate.—By *sect. 20*, the amount of the salary to every such paid constable shall be paid by the overseers, out of any monies in their hands collected for the relief of the poor.

Constables not to be appointed at Courts Leet.—By *sect. 21*, no petty constable, headborough, borsholder, tithingman, or peace officer of the like description under any name of office, shall be appointed for any parish, township, or vill, within the limits of the act, except for the performance of duties unconnected with the preservation of the peace or with the execution of the act, at any court leet or torn, or otherwise than under the provisions of the act, or of the 2 & 3 Vict. c. 93.

Places exempted from the operation of the Act.—But nothing is to prevent the appointment of special constables, or to apply to the city of London, or to the metropolitan police district, or to any borough which is within the provisions of the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, or of any charter granted in pursuance of that act, or of any act made for the amendment thereof; or to any parish, town, or place in which rates are, or shall be, levied for the payment of constables, under the provisions of the 3 & 4 Will. 4, c. 99, for the lighting and watching of parishes in England and Wales, or of any local act specially applying to such parish, town, or place; and nothing in the act contained is to apply to the county palatine of Chester.

Lock-up Houses.—By *sect. 22*, the justices at the quarter sessions may order that lock-up houses for the temporary confinement of persons taken into custody by any constable, and not yet committed for trial, or in execution of any sentence, shall be provided in such places within their county as they shall think fit; and for that purpose may purchase and hold lands and tenements, or appropriate to that purpose any lands and tenements belonging to the county, which

are not needed for the purpose to which they were applied, or intended to be applied before such appropriation; or, instead of providing new lock-up houses, may order that the lock-up houses, strong rooms, or cages belonging to any parish be appropriated for the purpose of the act, and, if necessary, be enlarged or improved; and the expense of building, hiring, or otherwise providing, repairing, and furnishing such lock-up houses, are to be defrayed out of the county rates. Notice of the day and hour, at which any business relating to providing, enlarging, or improving any such lock-up house will begin at such session, is to be given by the clerk of the peace, with the notice of holding the session, on the requisition of any five justices acting for such county; and no such lock-up house shall be built, or otherwise provided, enlarged, or improved, except upon such plan as shall be approved by the secretary of state; and every such lock-up house is to be within the inspection of the inspectors of prisons.

Superintendents.—By *sect. 23*, whenever the justices shall have provided a lock-up house under the act, they shall also appoint a superintending constable to have the charge thereof, who shall have all the powers and immunities of a parish constable under the act, and shall have the superintendence of all the parish constables appointed in such parishes, as shall be ordered by the said justices, and under such regulations as they shall make; and every such superintending constable shall be entitled to hold his office until dismissed by the justices in general or quarter sessions, and shall receive such salary out of the county rate as those justices shall order.

Recovery of Penalties.—By *sect. 24*, all penalties made payable on conviction of any offender before two justices of the peace may be levied, in case of non-payment thereof, with the costs and charges attending such conviction, by distress and sale of the goods and chattels of the offender, by warrant under the hand and seal of any justice of the peace of the county, riding, or place wherein such conviction shall have taken place, with the reasonable costs of such distress and sale; and the overplus, if any, shall be returned to the party whose goods and chattels shall have been distrained.

By *sect. 25*, all penalties levied under the act are to be applied in aid of the poor rates of the parish in which the offence shall have been committed, for which such penalties shall be levied.

Conviction.

Page 195. *When removed by Certiorari.*—Where a conviction or order of justices is returned to the Court of Queen's Bench, and the proceedings are regular in form and in practice, and the case one over which the justices had jurisdiction, the Court will not hear affidavits impeaching their decision on the facts, nor, if they return the evidence, will it review their judgment thereupon. The test of jurisdiction under this rule is, whether or not the justices had power to enter upon the inquiry; not whether their conclusions in the course of it were true or false. It may be shown therefore by affidavit, that they had no authority to commence an inquiry, inasmuch as the question brought before them was not one to which their jurisdiction extended; and this, although by misstatement, they have made the proceedings on the face of them regular.—*Reg. v. Bolton*, 1 Q. B. Rep. 66.

Where an order of justice for delivering up a house to parish officers, under the 59 Geo. 3, c. 12, ss. 24, 25, was correct in form, and made on a proper information, summons, and hearing, the Court (on *certiorari*) refused to inquire into the reasonableness of their judgment, either on affidavit, or on the evidence returned with the proceedings, although the act gives no appeal against such order.—*Ibid.*

Corn.

Page 201. By 5 & 6 Vict. c. 14, s. 1, the 9 Geo. 4, c. 60, is repealed; but by *sect. 6*, the provisions of the 5th section of the last-mentioned act are re-enacted, as to the importation of malt or corn ground.

Page 202. *Omitting to make Declarations or Returns.*—By *sect. 39*, if any person, who is required by the act to make and deliver the declaration therein mentioned as to the quantities and prices of corn bought by him, shall not make and deliver such declaration, as directed and prescribed by the act, he is liable to a penalty not exceeding 20*l.* for every calendar month during which he shall so neglect. And if any person, who is required by the act to make any return to the inspector for the city of London, or the city of Oxford, or town of Cambridge, or to any officer of excise acting as inspector, or to any continuing inspector under the former act, shall not make such returns in the manner directed and prescribed by the act, he is liable to a penalty not exceeding 20*l.*

By *sects. 40, 41, 42, and 44*, there are the same provisions as to the

recovery of penalties, the default of witnesses, making false returns, and the limitation of actions, as are contained in the 9 Geo. 4, c. 60.

Corporations.

Page 203. Notice of appeal against a borough rate, under 5 & 6 Will. 4, c. 76, s. 92, must be given to the town clerk of the borough; and though the borough be a county of itself, having quarter sessions, a recorder, and a clerk of the peace, under *sect.* 103, notice to such clerk of the peace is not necessary.—*R. v. Carmarthen Recorder*, 7 Ad. & E. 756.

The 132 *sect.* of the above act takes away a *certiorari* to remove an order of the borough sessions, quashing an appeal against a rate made under *sect.* 32.—*R. v. Ripon Justices*, 7 Ad. & E. 417.

Where a separate court of quarter sessions has been granted to a borough under the Municipal Corporation Act, 5 & 6 Will. 4, c. 76, the recorder, under *sect.* 105, has in such court exclusive jurisdiction of appeals against orders of removal made by the borough justices.—*Reg. v. Suffolk Justices*, *Reg. v. Shropshire Justices*, *Reg. v. Lancashire Justices*, 32 Q. B. Rep. 85.

But the recorder cannot try an appeal against the refusal of the borough justices to grant an alehouse licence, that power being withheld from them by *sect.* 105. Such appeal therefore may still be tried at the county sessions.—*Reg. v. Deane*, 2 Q. B. Rep. 96.

The 111 *sect.* of the above act, excluding the county justices from jurisdiction in any part of such borough, relates only to jurisdiction exercised out of sessions.—*Ibid.*

County Rate.

Page 209. *Exemption from.*]—Under 55 Geo. 3, c. 51, s. 1, a borough cannot claim exemption from county rate, as situate within a franchise “having a separate jurisdiction,” on the ground that the borough has by charter justices of the peace, coroners, a court of record for civil causes, and a prison of its own; the justices not having power to hold sessions or try felonies, and the charter containing no *non intromittant* clause, and the county justices having, in fact, often committed prisoners to the county gaol for offences done within the borough, and the maintenance of such prisoners and the expenses of the prosecutions (except in one instance) having been borne by the county. And the Court will not presume an exemption of such borough from county

rate by immemorial prescription, or a lost grant, on the ground that the borough has never yet paid county rate, and has always maintained its own bridges and gaols, and borne the expenses of inquisitions held by its coroners.—*R. v. Hayward*, 6 Ad. & E. 590.

Curtilage.

By 7 Will. 4 and 1 Vict. c. 90, the punishment for breaking and entering any building within the curtilage of a dwelling-house and occupied therewith, and stealing any property therein, is altered to *Transportation, not exceeding fifteen years, nor less than ten; or to imprisonment not exceeding three years, with or without hard labour and solitary confinement.*

Dead Bodies—And see Gaol.

Page 216. Every person dying in this country, and not within certain ecclesiastical prohibitions, is entitled to Christian burial; and where no such prohibition attaches, it seems that every householder, in whose house a dead body lies, is bound by the common law to inter the body decently; and that upon this principle, where a body lies in the house of a parish or union, the parish or union must provide for the interment. But the overseers of a parish are not bound to bury the body of a pauper lying in the parish, but not in a parochial house; although such pauper is a married woman, whose husband is settled in the parish, and receiving relief there.—*Reg. v. Stewart*, 12 Ad. & E. 773 (a).

Gaol.

Page 374. Where a gaoler refused to deliver up the body of a person, who had died while a prisoner in execution for debt in his custody, to the executors of the deceased, unless they would satisfy certain claims made against the deceased by the gaoler, the Court of Queen's Bench issued a *mandamus*, peremptory in the first instance, commanding that the body should be delivered up to the executors.—*Reg. v. Fox*, 2 Q. B. Rep. 246.

Highway.

Page 438. *Board Rate.*—Where a parish consists of several

(a) *Quere*: Who is to bury the body, lies, has not the means of doing so, being when the householder, in whose house it himself a pauper?

tithings, each of which has immemorially repaired its own highways, the parish cannot form a board under *sect.* 18 of 5 & 6 Will. 4, c. 50; and rates made by such board, although separately for each tithing, are bad.—*Reg. v. Bush*, 9 Ad. & E. 820.

Page 454. *Stopping up and diverting.*]—There is no part of the administration of the law by justices of the peace acting on their own authority, in which it is more necessary for the superior courts to look closely at their proceedings, than the stopping up of highways; and therefore, if an order for that purpose is not framed in the precise terms of the statute, it will be quashed by the Court of Queen's Bench. Thus an order of two justices to stop up a highway, if not made *upon a joint view*, is bad.—*R. v. Justices of Cambridgeshire*, 4 Ad. & E. 111. And it must appear on the face of the order, that they have *viewed* the particular road ordered to be stopped up, and that, *upon such view*, it appeared to them that the highway was unnecessary.—*R. v. Magistrates of Downshire*, 4 Ad. & E. 698.

But where the order stated that “We, &c. *having upon view found*, and it appearing to us, that a certain highway, &c. is unnecessary;” this recital was held not to imply that the justices acted upon any other information than their own view, and that the “appearing,” as stated in the order, was a result of the view.—*R. v. Milverton*, 5 Ad. & E. 841. Where, however, the order began with this recital, “We, &c. *having viewed* a certain public highway,” &c. “*and it appearing* to us that such highway is unnecessary,” we do order, &c.; this was held to be a bad order, as the words did not necessarily imply that it appeared to the justices upon the view, that the highway was unnecessary.—*Reg. v. Jones*, 12 Ad. & E. 684.

Under the former highways acts, 13 Geo. 3, c. 78, and 55 Geo. 3, c. 68, it was held that the justices could not, by one and the same order, direct that a highway should be diverted, and that the old way should be stopped, but that separate orders were necessary.—*R. v. Justices of Middlesex*, 5 Ad. & E. 626. And now, under 5 & 6 Will. 4, c. 50, s. 86, the justices cannot stop several highways by one order, except so far as they are authorized by that section of the act.—*R. v. Milverton*, 5 Ad. & E. 841.

An order of justices for stopping an unnecessary highway, under 55 Geo. 3, c. 68, s. 2, was held bad, where it stopped up half the breadth of a highway, leaving the rest open, although the other half was not within their division. But *quære*, whether the justices of the two divisions could not, by order made concurrently, stop both

sides.—*Ibid.* It seems that, if an order has been properly made and enrolled for stopping a highway, it is not necessary, to make such order completely effectual, that an actual stoppage should have taken place.—*Ibid.*

Page 455. On appeal to the sessions, under 5 & 6 Will. 4, c. 50, s. 88, 89, where justices have certified for diverting a highway, the sessions cannot order such diversion, if it appear that the proposed new way was either not nearer, or not more commodious to the public than the old, or that the appellant would be injured or aggrieved by the order.—*Reg. v. Shiles*, 1 Q. B. Rep. 919.

Sect. 108, giving a *certiorari*, and empowering the sessions to state a special case, extends to orders made on appeal, under *sect.* 89.—*Ibid.*

Two justices made a certificate for diverting parts of a highway, described in the certificate, as leading from *Wyke* to *Axminster*. The part to be diverted ran from A. to B., there meeting the *Axminster* turnpike road (which, at the point B., communicated with various other places), and along that road, in the direction of *Axminster*, to a point C. The proposed new line ran directly from A. to C., meeting the turnpike road at that point. And the justices certified, that by the new line it would be eighty yards nearer from *Wyke* to *Axminster* than by the old, and that the highway being diverted into the new line, the part A. B. would become unnecessary. Appeal, on the ground that, reference being had to the different towns and places with which the original parts of the highway communicated, the new line proposed to be substituted for the old would not be nearer. *Held*, that on the trial of such appeal the proper question for the jury, so far as related to the comparative nearness, was, whether the distance from A. to the turnpike road at B. was less by the line A. C. B. than by the old line A. B., and not whether the distance from *Wyke* to *Axminster* by A. C. was less than by the old line A. B.—*Ibid.*

Page 459. *Appeal.*]—A party convicted by two justices in special sessions, on information of one of the surveyors, cannot be heard on appeal to the quarter sessions, under *sect.* 105, unless he has served notice upon both the convicting justices. It is not sufficient that he has served notice on the surveyors, and also a notice on one of the justices addressed to both, which that justice has transmitted to the clerk of the special sessions, with an observation to him that he will know how to act upon it.—*Reg. v. Bedfordshire Justices*, 11 Ad. & E. 134.

Page 431, 459. *Appeal—Surveyor's Accounts.*]—Under the 5 & 6 Will. 4, c. 50, ss. 44, 105, no appeal lies to the quarter sessions against the allowance of the surveyor's accounts at the petty sessions. And, where even the justices in petty sessions, who had allowed accounts which were complained of, deposed that they had not fully entered into the case, under the impression that an appeal lay to the quarter sessions, and that the case involved important questions of law, the Court of Queen's Bench held that it had no power to issue a *mandamus* to review the allowances.—*Reg. v. West Riding of Yorkshire Justices*, 1 Q. B. Rep. 624.

Hop-binds.

Page 472. By 7 Will. 4 and 1 Vict. c. 90, s. 2, the punishment for cutting hop-binds is altered to *Transportation not exceeding fifteen years, nor less than ten, or imprisonment not exceeding three years, with or without hard labour and solitary confinement.*

Housebreaking.

Page 477. It appears that the omission noticed in the 7 Will. 4 and 1 Vict. c. 86, s. 1 is supplied by the 7 Will. 4 and 1 Vict. c. 90, s. 1, under which last mentioned act, the offence of breaking and entering a dwelling-house, and stealing therein any property, is only punishable with *Transportation not exceeding fifteen years, nor less than ten years, or imprisonment not exceeding three years, with or without hard labour and solitary confinement (a).*

Information.

Page 489. An information, to ground a warrant against a party for an assault, must be taken *on oath*, and must so appear in the warrant. And any information or deposition taken by a justice's clerk, the justice not being present, nor at any time seeing, examining, or hearing the deposition, is irregular, and no justification of proceedings founded upon it.—*Caudle v. Seymour*, Q. B. Rep. 889.

(a) One would certainly have sooner expected to find any alteration in the punishment for this offence in the 7 Will. 4 and 1 Vict. c. 86, intituled, "An Act to

amend the laws relating to burglary, and stealing in a dwelling-house," instead of looking for it in another statute.

Landlord and Tenant.

Page 517. *Tenants deserting the demised Premises.*]—Where two magistrates made an order for the giving possession of premises to the landlord, under 11 Geo. 2, c. 19, s. 16, and the judges of assize, on appeal against the order under sect. 17, made an order for restitution of the premises to the tenant, which was not directed to any person; it was held that a *mandamus* could not issue, commanding the two justices to make restitution.—*Reg. v. Traill*, 12 Ad. & E. 762.

Lunatics.

Page 535. *Return of Lists by Overseers.*]—By 5 & 6 Vict. c. 57, s. 6, the guardians of any parish or union are invested with the same powers as overseers, with respect to insane persons. And whenever any insane person is relieved by the board of guardians or any of their officers, the relieving officer of the district is required to give the like information to some justice for the division, as is required of overseers by the 9 Geo. 4, c. 40, s. 37. And the overseers are not required in future to make the annual return prescribed by the 9 Geo. 4, c. 40, s. 36; but that duty is imposed upon the clerk to the board of guardians of any parish or union, who is to observe the form of return given in the schedule of the act.

Page 536. *Order for Costs of Removal, &c.*]—Two justices made an order under the 9 Geo. 4, c. 40, s. 38, as follows: "Whereas A. C. of Woolley, being a person insane, lunatic, and dangerous to go abroad, was on the 29th August last removed to and confined, under an order of two justices in and for the West Riding, in the lunatic pauper asylum at W. in the said riding, and whose legal settlement, after due inquiry made, and satisfactory evidence obtained, is at D. in the said riding; therefore, we, two of her Majesty's justices in and for the said riding, do hereby adjudge the legal settlement of the said A. C. to be in the parish of D.; and whereas it hath been duly proved before us upon oath, that the sum of 6*l.* hath been incurred by the township of Woolley aforesaid, in the removing, maintenance, and care of the said A. C. to the asylum aforesaid; we therefore order the overseers of D. aforesaid, to which parish the last legal settlement of A. C. is ascertained and adjudged to belong, to pay the sum of 6*l.* to the overseers of Woolley aforesaid on demand. Given, &c. March 20th, 1839." Held, that this was not a valid order under sect. 38, because it operated retrospectively; nor

under sect. 42, because it did not shew that the justices making the order were those who had inquired and heard evidence.—*Reg. v. Darton*, 12 Ad. & E. 78.

Page 537. *Settlement of Lunatic*.]—Two justices made an order under 9 Geo. 4, c. 40, ss. 38, 41, for removing a lunatic pauper mentioned in the order as chargeable to the township of D., and thereby directed the overseers of D. to remove her to the county lunatic asylum; the charges of removal, maintenance, &c. to be paid by the county treasurer, as the pauper's settlement was unknown. Two other justices by a subsequent order, under sect. 42, reciting the first order and its execution, adjudged, after inquiry by them, that the pauper's settlement was in D., and directed the overseers of D. to reimburse the county treasurer, and to pay, at a certain rate, for the pauper's future maintenance, &c. On appeal against this order, it appeared that the first order was applied for by the assistant overseer of D., the nature of whose duties, however, was not proved; and that the overseers of D. removed the pauper, in obedience to the first order. That order did not mention any person, as the party applying for it. *Held*, that the overseers of D., not having appealed against the first order, were precluded from alleging, as a ground of appeal against the second, that the former order was made without legal proof of chargeability.—*Reg. v. Holdsworth*, 1 Q. B. Rep. 221.

Manufactories.

Page 553. By 7 Will. 4 and 1 Vict. c. 90, the punishment of stealing from manufactories is altered to *Transportation not exceeding fifteen years nor less than ten, or to imprisonment not exceeding three years, with or without hard labour and solitary confinement*.

Orders.

Page 635. Where an order of justices, in pursuance of the authority given them by a statute, is correct in form, and made on a proper information, summons, and hearing, the Court of Queen's Bench will not inquire into the reasonableness of their judgment, either on affidavit, or on the evidence returned with the proceedings; although the statute gives no appeal against such order. The test of jurisdiction is, whether or not the justices had power to enter upon the inquiry; not, whether their conclusions, in the course of it, were true or false.—*Reg. v. Bolton*, 1 Q. B. Rep. 66.

Pawnbrokers.

Page 637. *Rate of Interest.*—Where the pledge is redeemed after several months, and the interest is a sum which is not an exact number of farthings, the pawnbroker is not entitled to calculate the interest on each month separately, taking upon each month the benefit of the fraction of the farthing; for there is nothing in the act that prescribes, that, in calculating the interest for several months, rests must be made monthly, but only that the pawnbroker may receive a profit after the rate of so much per month.—*Reg. v. Goodburn*, 8 Ad. & E. 508.

Poor.

Page 675. *Power of Commissioners.*—The Commissioners may order the guardians of an union to appoint a chaplain for the union workhouse, with a salary; such chaplain being an officer, within the meaning of the 4 & 5 Will. 4, c. 76, s. 46, interpreted by sect. 109.—*Reg. v. Guardians of Braintree Union*, 1 Q. B. Rep. 130.

Page 678. *Election of Churchwardens.*—In the election of churchwardens, if a poll be demanded, the votes are to be given by the qualified inhabitants present; but all qualified inhabitants (whether they were present or not at the shew of hands) have a right to be admitted into the vestry-room, and vote during such poll; although the qualified inhabitants, who were present at the time of granting such poll, resolved that the poll should be confined to those then present. It is not a sufficient ground for impeaching such election, that the poll was taken with closed doors, unless it be expressly sworn that some qualified person who meant to vote was thereby prevented from doing so.—*Reg. v. St. Mary, Lambeth, Rector of*, 8 Ad. & E. 356.

Page 936. *Appeal.*—The recorder of a corporation, having a grant of quarter sessions under the 5 & 6 Will. 4, c. 76, s. 103, with the powers described in sect. 105, may try appeals against orders of removal from places within the borough.—*Reg. v. St. Edmund's, Salisbury*, 2 Q. B. Rep. 72.

And although it was made a query in that case, whether the sessions for the county, which had cognizance of such appeals under the 8 & 9 Will. 3, c. 30, before the Municipal Corporation Act was passed, have, for that purpose, a concurrent jurisdiction with the borough sessions; yet it was afterwards decided, that the recorder

has, in such court, exclusive jurisdiction of appeals against orders of removal made by the borough justices.—*Reg. v. Suffolk Justices*, 2 Q. B. Rep. 85; *Reg. v. Shropshire Justices*, *Ibid.*; *Reg. v. Lancashire Justices*, *Ibid.*

Page 946. *Poor—Effect of Order unappealed against.*—See *Reg. v. Holdsworth*, *ante*, 1481.

Railways

Page 1017. *Bridges and Archways.*—A railway act (6 & 7 W. 4, c. 14), provided, that, where any part of any road should be cut through, taken &c., in exercise of the powers given to the railway company, they should first make another road instead thereof, as convenient for passengers and carriages as the former road; and that where such road was turnpike, “the substituted road, if temporary, shall be set out and made, and the principal road shall be restored, within six calendar months after the commencement of the operation;” and that where any bridge should be erected for carrying any turnpike road over the railway, “the road over such bridge” should be not less than fifteen feet wide. The level of the ascent of every such bridge was also regulated. The company made a bridge fifteen feet wide, with approaches at each end (187 and 126 yards long respectively), for conveying a turnpike road over the railway, and took part of the former turnpike road for the purpose of making the approaches, which were carried along and within the space which that road had occupied. On *mandamus* to the company to make and restore such part of the turnpike road according to the statute, alleging that the trustees of the road had duly required them to do so within six calendar months after commencement of the operation; it was *held*, that the company were bound to make the approaches as wide as the turnpike road had been. And that it was no sufficient return, that the approaches, though of a less width, were as convenient to the public as they could be made in execution of the powers of the act, and as convenient to the public as the original road had been; or, that the company could not now widen the approaches, without taking and purchasing more land; that their compulsory powers of purchasing under the act had expired before they were called upon to widen; and that they had not then, nor have since had, the power to take or purchase land for such purpose. *Reg. v. Birmingham and Gloucester Railway Company*, 2 Q. B. Rep. 47.

Riot.

Page 1035. *Riotously demolishing churches, houses, &c.*—By 6 Vict. c. the punishment for this offence is declared to be *Transportation for life, or not less than seven years, or imprisonment with or without hard labour not exceeding three years.*

Shops.

Page 1161. By 7 W. 4 and 1 Vict. c. 90, the punishment for breaking into any shop, warehouse, or counting-house, and stealing therein, is altered to *Transportation not exceeding fifteen years, nor less than ten years, or to imprisonment not exceeding three years, with or without hard labour and solitary confinement.*

Soldiers.

Page 1192. By 7 W. 4 and 1 Vict. c. 91, the punishment for seducing soldiers or sailors from their allegiance, is altered to *Transportation for life, or not less than fifteen years, or imprisonment not exceeding three years, with or without hard labour and solitary confinement.*

Warrant.

Page 1440. *Where offenders escape from the colonies to the United Kingdom.*]—By 6 Vict. c. , if any person, charged with having committed any such crime or offence, as is thereafter mentioned, against the laws of her Majesty's islands, plantations, colonies, forts, factories, or other dominions not forming part of the United Kingdom of Great Britain and Ireland, and against whom a warrant shall have been issued for such crime or offence by any judge, magistrate, or other person having lawful authority to issue the same, shall escape, go into, reside, or be in any place within the United Kingdom of Great Britain and Ireland, any justice of the peace of the county, town, or place, whither such person shall have escaped or gone, or where he shall reside or be, may indorse his name on such warrant; which warrant so indorsed shall be a sufficient authority to the person bringing the same, and to all persons to whom it was originally directed, and also to all constables and other peace officers of the county, town or place, where it shall be so indorsed, to execute the warrant in the county, town or place, where the warrant shall be so indorsed, by apprehending the person against whom such warrant is directed, and to convey him before a justice for the county, town or

place where the said warrant shall have been so indorsed, who may commit him to gaol, until he can be sent back and conveyed to that part of her Majesty's dominions in which the offence has been committed, there to be dealt with in due course of law. The justice is required, immediately upon the committal of such person, to give information thereof in writing under his hand, accompanied by a copy of the warrant, to the secretary of state.

By *sect. 2*, the secretary of state may, by warrant under his hand and seal, order offenders so apprehended to be conveyed back to the place where the offence was committed, to be dealt with there in due course of law.

What proof required of original warrant].—By *sect. 3*, when any such warrant shall be so required to be acted upon within the United Kingdom, no court, or justice of the peace can proceed to enforce or to act upon the same, until it shall have been proved upon oath, or by affidavit, that the seal or signature upon the same is the seal or signature respectively of such judge, magistrate or other person having lawful authority to issue such warrant.

For what offence the warrant can be indorsed.].—By *sect. 4*, no warrant can be so indorsed, unless it shall appear upon the face of the warrant, that the offence, which the party is charged to have committed, is of such a nature, that, if the same had been done and committed within the United Kingdom of Great Britain and Ireland, it would have amounted in law to a *felony*.

Offenders escaping from the United Kingdom to the Colonies.].—By *sect. 5*, where a warrant is issued in the United Kingdom against any party for a felony, and he escapes to any colony, the chief justice, or any other judge of the superior court of law there, may in like manner indorse his name on the warrant, which shall be a sufficient authority to execute it within the colony, by apprehending the party, and to convey him, without delay and with all convenient speed, into the United Kingdom, and to take him, immediately upon arriving and landing, before some justice for the county, town or place, where he shall first be upon such arriving and landing, who is required to deal with such person in all respects as if he had been there legally apprehended.

By *sect. 6*, the colonial judge cannot enforce the warrant, until the seal or signature to the warrant is proved by oath or affidavit.

Expense of removal of offenders.].—By *sect. 7*, the court, before

which any person so apprehended and removed as last aforesaid shall be prosecuted or tried, may order that the expenses of apprehending and removing any prisoner from any colony to the United Kingdom, shall be repaid to the person defraying the same by the treasurer of the county, city, or borough in England and Ireland respectively, or by the sheriff or steward-depute or substitute of the county or stewartry in Scotland, in which the crime is charged to have been committed, the amount of such expenses being previously ascertained by an account thereof, verified upon oath before two justices of the peace of such County, city, borough or stewartry, as the case may be, who are required to examine into the correctness of the account, and to allow the same or such part thereof, as shall to them appear just and reasonable, under their hands and seals.

APPENDIX.

ORDER OF THE POOR LAW COMMISSIONERS AS TO LOST CHILDREN AND STRAY LUNATICS.

To the guardians of the poor of the several unions and parishes under a board of guardians named in the schedule hereunto annexed.

To the churchwardens and overseers of the several parishes and places comprised within the said unions, and of the several other parishes named in the said schedule.

To the clerk or clerks to the justices of the petty sessions held for the division or divisions in which the parishes and places comprised within the said unions and the other parishes named in the said schedule are situate; and to all others whom it may concern.

In pursuance of the authorities vested in us by an act of parliament, passed in the fifth year of the reign of King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," we, the Poor Law Commissioners, do hereby order and direct as follows:—

Art. 1.—Whenever any child supposed to have strayed, or any insane person wandering abroad, whose friends or relations are unknown, shall have been received into any workhouse belonging to any of the unions or parishes mentioned in the schedule hereunto annexed, the master or other person having charge of such workhouse shall properly fill up four notices in the forms marked A. or B. respectively, hereto annexed, and shall forthwith cause one of such notices to be affixed on the outer gate of the said workhouse, and shall forward one other of the same so filled up, to each of the three police stations, whether of the Metropolitan or City Police, nearest to the place where such child or insane person shall be understood to have been found.

Art. 2.—If, at the expiration of twenty-four hours from the reception of such child or insane person into such workhouse, no claim or inquiry respecting the same shall have been made at the workhouse in which such child or insane person shall have been received, the master or other person having charge of such workhouse shall send a copy of the notice already filled up as hereinbefore directed to the clerk to the guardians of the parish or union to which such workhouse may belong; and such clerk shall immediately cause to be prepared forty-eight copies of the notice so filled up and forwarded to him, and shall forthwith transmit thirty-six copies of such notice to the

Commissioners of the Metropolitan Police, at their chief office, and twelve copies of such notice to the Commissioner of Police for the City of London at his office.

Art. 3. In the construction of this present order—

1. The word "child" shall be taken to signify every person being or appearing to be under twelve years of age.
2. The words "insane person" shall be taken to signify any idiot or other person of unsound mind.

Form (A.)

CHILD FOUND.

Where _____
 When _____
 Sex _____
 Name (if known) _____
 Apparent Age _____
 Complexion _____
 Hair (Colour of) _____
 Particular Marks on the Person _____
 Dress and Marks thereon _____
 Any Statement made by the Child as to its Abode _____

 Now in _____ Workhouse.
 _____ Day of _____ 184

Form (B.)

INSANE PERSON FOUND.

Where _____
 When _____
 Sex _____
 Name (if known) _____
 Apparent Age _____
 Complexion _____
 Hair (Colour of) _____
 Particular Marks on the Person _____
 Dress and Marks thereon _____
 Any Statement made by the Insane Person as to his or her Abode _____

 Now in _____ Workhouse.
 _____ Day of _____ 184

Schedule containing the Names of the Unions and Parishes to which the Present Order applies.

LIST OF UNIONS AND PARISHES.

Unions.	Parishes.	
Hackney.	George, St., in the East.	} In the County of Middlesex.
Holborn.	Martin, St., in the Fields.	
Kensington.	Matthew, St., Bethnal Green.	
London, City of		
London, East		
London, West		
Olave's, St.		
Poplar.	George, St., the Martyr, Southwark.	} In the County of Surrey.
Saviour's, St.	Giles, St., Camberwell.	
Stepney.	Mary, St., Lambeth.	
Strand.	Mary Magdalen, St., Bermondsey.	
Wandsworth and Clapham.	Mary, St., Rotherhithe.	
Whitechapel.		

Given under our hands and seal of office, this 3d day of December, in the year 1841

(Signed)

G. C. LEWIS.

EDMUND W. HEAD.

MEDICAL ORDER (a).

To the guardians of the poor of the several unions named in the schedule hereunto annexed.

To the clerk or clerks to the justices of the petty sessions, held for the division or divisions in which the parishes and places comprised within the said unions are situate.

And to all others whom it may concern.

We, the Poor Law Commissioners, in pursuance of the authorities vested in us by an act passed in the fifth year of the reign of his late Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," do hereby order, direct, and declare, with respect to each and every of the unions named in the schedule hereunto annexed, as follows:—

Tender.

Art. 1. It shall not be lawful for the board of guardians of any of the said unions, by advertisement, or other public notice, printed or written, to invite tenders for the supply of medicines, or for the medical attendance on any of the paupers within any

(a) See *ante*, p. 709.

such union, unless such advertisement or notice shall specify the district or place for which such supply of medicines and such attendance is required, together with the amount of salary or other remuneration fixed or approved by the Poor Law Commissioners, as the consideration for such supply of medicines and such attendance, or either of them.

Art. 2. All salaries or other payments to any medical man, fixed by any of the said boards of guardians, and every contract made by any of the said boards of guardians with any medical man, in pursuance of any advertisement or other notice, inviting medical men to tender their services at a sum or sums not named in such advertisement, or notice, shall be deemed to be fixed or made in opposition to the rules and regulations of the Poor Law Commissioners in force in this behalf, and all payments made towards such salary, or in fulfilment of such contract, shall be disallowed in the accounts of the parties authorizing or making the same.

Qualification.

Art. 3. It shall not be lawful for any of the said boards of guardians to appoint any person to be a medical officer, unless such person, at the time of his appointment, shall possess one of the four following qualifications: that is to say,—

1. A diploma from the Royal College of Surgeons in London, together with a degree in medicine from an university in England, legally authorized to grant such degree, or together with a diploma or licence of the Royal College of Physicians of London.
2. A diploma from the Royal College of Surgeons in London, together with a certificate to practise as an apothecary from the Society of Apothecaries of London.
3. A diploma from the Royal College of Surgeons in London—such person having been in actual practice as an apothecary on the 1st day of August, 1815.
4. A warrant or commission as surgeon or assistant surgeon in her Majesty's navy, or as surgeon or assistant surgeon or apothecary in her Majesty's army, or as surgeon or assistant surgeon in the service of the Honourable East India Company, dated previous to the 1st day of August, 1826.

Art. 4. Provided always, that if it shall not be practicable for the board of guardians to procure a person residing within or near the district in which he is to act, and duly qualified in one of the four modes recited in Art. 3, to attend on the poor in such district, or that the only person resident in or near such district, and so qualified, shall have been dismissed from office under the seal of the Poor Law Commissioners, or shall be judged by the Poor Law Commissioners to be unfit or incompetent to hold the office of medical officer, then and in such case the board of guardians shall cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which, in their opinion, make it necessary to employ a person not qualified as required by Art. 3, and shall forthwith transmit a copy of such minute to the Poor Law Commissioners for their consideration; and the Poor Law Commissioners may, if they think fit so to do, permit the employment by such board of guardians of any person duly licensed to practise as a medical man, although such person shall not be qualified in one of the four modes required by Art. 3.

Art. 5. Provided also, that it shall be lawful for the board of guardians, with the consent of the Poor Law Commissioners first had and obtained, to continue in office

any medical officer, duly licensed to practise as a medical man already employed by any such board of guardians, although such medical officer may not be qualified in one of the four modes required by Art. 3.

Maximum Area and Population of Medical Districts.

Art. 6. It shall not be lawful for the board of guardians to assign to any medical officer, to be by them hereafter appointed, a district which shall exceed in extent the area of 15,000 statute acres, or which shall contain a population exceeding the number of 15,000 persons, according to the then last enumeration of the population published by authority of parliament.

Art. 7. Provided always, that where any medical officer may, on the day on which this order shall come in force, hold any district exceeding either in area or population the limits fixed in Art. 6, and such medical officer may have been appointed to such district for any time not exceeding twelve calendar months, he shall continue to hold his office, if not otherwise removed therefrom, up to the expiration of the time for which he was so appointed; but that where any medical officer shall have been appointed to any district exceeding the said limits in area or population for any space of time longer than twelve calendar months from the day in which this order shall come into force, the continuance of such officer in his office shall cease and determine on the 25th day of March, 1843, or whenever the term of such appointment may expire, whichever shall first happen.

Art. 8. Provided also, that if it shall be impracticable for the board of guardians to divide any union into districts containing respectively an area and population less than is specified in Art. 6, then and in such case the board of guardians shall cause a special minute to be made and entered on the usual record of their proceedings, stating the reasons which in their opinion make it necessary to form a district exceeding the said limits, and shall forthwith transmit a copy of such minute to the Poor Law Commissioners for their consideration, and if the Poor Law Commissioners shall signify their approval thereof to such guardians, then and in such case, but not otherwise, such guardians may proceed to appoint a medical officer for the said district.

Art. 9. Provided also, that the limits of 15,000 statute acres prescribed in Art. 6, shall not apply or be in force in respect to any medical district situate wholly or in part within the principality of Wales; but no medical district situate wholly or in part within that principality shall be assigned to any medical officer residing more than seven miles from any part of any parish included within such district, unless the formation of such district shall have been specially sanctioned by the Poor Law Commissioners in the same manner as is directed in Art. 8.

Rates of Payment in Surgical and Midwifery Cases.

Art. 10. No salary of any district medical officer, or contract made by any board of guardians with a district medical officer, shall include the remuneration for the operations and services of the following classes performed by such medical officer in that capacity for any out-door pauper, but such operations and services shall be paid for by the board of guardians according to the rules specified in this article.

1. Amputations of leg, arm, foot, or hand	}	£ s. d.
2. The operation for strangulated hernia		
3. The operation of trephining for fractured skull		5 0 0
4. Treatment of compound fractures of the thigh		
5. Treatment of compound fractures or compound dislocations of the leg	}	
6. Treatment of simple fractures or simple dislocations of the thigh or leg		3 0 0
7. Treatment of dislocations or fractures of the arm		1 0 0

The above rates to include the payment for the supply of all kinds of apparatus and splints.

Provided that in every such case the patient survives the operation not less than thirty-six hours, and that he has required and has received several attendances after the operation by the medical officer, who has performed the same.

Provided also, that except in cases of sudden accident immediately threatening life, no medical officer shall be entitled to receive such remuneration for any amputation, or for the operation of trephining, unless he shall, before performing such amputation or operation, have obtained at his own cost the advice of some member of the Royal College of Surgeons of London, or some Fellow or Licentiate of the Royal College of Physicians of London, and shall produce to the board of guardians a certificate from such member of the Royal College of Surgeons, or such Fellow or Licentiate, stating that in his opinion it was right and proper that such amputation or operation should be then performed.

Art. 11. All trusses furnished by a medical officer in consequence of any contract with or direction of a board of guardians, shall be charged by such medical officer at the cost price, including carriage, and be paid for accordingly by such board of guardians.

Art. 12. The delivery of any woman in childbirth, and the subsequent medical attendance upon her by any medical officer in that capacity, whether in or out of the workhouse, shall be paid for by the board of guardians in the manner specified in this and the following article; that is to say:

In cases in which any such medical officer shall be called on, by order of any person legally qualified to make such order, to attend any woman in or immediately after childbirth, or shall be required, under circumstances of difficulty or danger, without any order, to visit any such woman actually receiving relief, or whom the board of guardians may subsequently decide to have been in a destitute condition, such medical officer shall be paid for his attendance and medicines by a sum of not less than ten shillings, nor more than twenty shillings, as the board of guardians may determine, regard being had to the distance from the residence of such medical officer.

Art. 13. Provided that in any special case in which great difficulty may have occurred in the delivery, or long subsequent attendance may have been requisite, such medical officer shall receive the sum of two pounds; and if in any such case any dispute shall arise between the board of guardians and such medical officer, such medical officer shall not receive the said sum until the Poor Law Commissioners shall have signified their approval of such payment on a report made by such medical officer, and transmitted to them through the board of guardians of the said union.

Substitutes for Medical Officers.

Art. 14. Every medical officer appointed, or to be appointed, in pursuance of the rules, orders, and regulations of the Poor Law Commissioners, shall be bound to visit and attend personally the poor persons entrusted to his care, and shall be responsible for such visits and attendances, and shall so keep any weekly return prescribed by the orders of the Poor Law Commissioners, as to show when the visit or attendance made or given to any pauper was made or given by any person other than himself.

Art. 15. Every medical officer to be thereafter appointed shall, if practicable, within twenty-one days of the time of his appointment, name to the board of guardians, some legally qualified medical practitioner to whom application for medicines or attendance may be made, in the case of his absence from home, or other hindrance to his personal attendance, and who will supply the same at the cost of such medical officer; and the name and residence of every medical practitioner so named shall be forwarded by the clerk to the guardians to each relieving officer and to the overseers of every parish in the union.

Mode of obtaining Medical Relief by Permanent Paupers.

Art. 16. The board of guardians shall, once in every six months, cause to be prepared a list of all such aged and infirm persons, and persons permanently sick or disabled, as may be actually receiving relief from such board of guardians, and residing within the district of each medical officer of the union, and shall from time to time furnish to each medical officer a copy of the list aforesaid.

Art. 17. Every person whose name shall be inserted in such list shall receive a ticket in the following form, and shall be entitled, on the exhibition of such ticket to the medical officer of his district, to obtain such advice, attendance, and medicines, as his case may require, without any order from the relieving officer, overseer, or other authority.

Form of Ticket.

UNION.

 Date _____
 Good until the _____ day of _____ 184 .
 Name of pauper _____
 Residence of pauper _____
 Name of medical officer _____
 Residence _____
 Usual hour at which he is at home _____

Art. 18. Such medical officer shall, on the exhibition to him of the said ticket, and on application made on behalf of the party to whom such ticket was given, be held responsible for affording such advice, attendance, and medicines as he may be bound to supply, in the same manner as if he had received in each case a special order from the board of guardians, or from any officer, to afford such advice, attendance, and medicines.

Art. 19. Provided always, that if on complaint of any medical officer it be made to appear to the board of guardians, that any poor person who may have been furnished with a ticket in the aforesaid form shall have wilfully applied to or sent for the medical officer on frivolous grounds, such poor person shall for the first time be admonished by

the board of guardians, and on a repetition of such frivolous application, such poor person shall be deprived of his ticket, and thenceforth until the next half-yearly list be made out shall not be empowered, except in cases of sudden and urgent necessity, to demand advice, attendance, or medicines, from such medical officer, without an order of the board of guardians, a relieving officer, or an overseer of some parish in the union.

Continuance in Office of Medical Officers.

Art. 20. Every medical officer duly appointed in pursuance of the orders and regulations of the Poor Law Commissioners shall, unless the period for which he is appointed be expressly entered on the minutes of the guardians at the time of making such appointment, or be expressly inserted in a written contract entered into by such medical officer, and such period have been subsequently approved by the Poor Law Commissioners, continue in office until he may die or resign, or become legally disqualified to hold such office, or be removed therefrom by the Poor Law Commissioners.

Explanation of Terms.

Art. 21. Whenever the word "union" is used in this order, it shall be taken to include not only an union of parishes formed under the provisions of the hereinbefore recited act, but also any union of parishes incorporated or united for the relief or maintenance of the poor under any local act of parliament.

Art. 22. Whenever the word "guardians" is used in this order, it shall be taken to include not only guardians appointed or entitled to act under the provisions of the said hereinbefore recited act, but also any governors, directors, managers, or acting guardians entitled to act in the ordering of relief to the poor from the poor-rates under any local act of parliament.

Art. 23. Whenever the words "board of guardians" are used in this order, they shall be taken to mean not only a board of guardians competent to act under the provisions of the said hereinbefore recited act, but also such guardians, or such a number of any guardians, as are competent to order relief to the poor from the poor-rates under any local act of parliament.

Art. 24. Whenever the word "parish" is used in this order, it shall be taken to signify any parish, township, vill, or other place separately maintaining its own poor.

Art. 25. Whenever the word "medicines" is used in this order, it shall be taken to include all medical and surgical appliances, and whenever the words "medical attendance" are used in this order, they shall be taken to include surgical attendance.

Art. 26. Whenever the words "medical officer" are used in this order, they shall be taken to include any person duly licensed as a medical man, who shall have contracted with any board of guardians for the supply of medicines, or for medical attendance.

Art. 27. Whenever, in describing any person or party, matter or thing, the word importing the singular number, or the masculine gender only, is used in this order, the same shall be taken to include, and shall be applied to, several persons or parties as well as one person or party, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there be something in the subject or context repugnant to such construction.

Art. 28. Whenever in this order any article is referred to by its number, the article of this order bearing that number shall be taken to be signified thereby.

[The schedule appears to contain the names of all the unions under the jurisdiction of the Commissioners.]

Given under our hands and seal of office, this 12th day of March, in the year 1842.

(Signed)

G. C. LEWIS.

EDMUND W. HEAD.

ORDER AS TO THE PROCEEDINGS OF THE BOARD OF GUARDIANS.

To the guardians of the poor of the several unions, &c.

We the Poor Law Commissioners, in pursuance of the authorities vested in us by an act passed in the fifth year of the reign of his late majesty, King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," do hereby rescind so much of any order or orders heretofore issued by the Poor Law Commissioners to the several unions named in the schedule hereunto annexed, as is in any way affected or altered by the regulations herein contained, except so far as the same may have authorized the making of any contract not yet executed, or the making of any orders for contributions and payments not yet obeyed.

And we do hereby order, direct and declare, with respect to each of the unions named in the said schedule, as follows :

Meetings of the Guardians (a).

Art. 1. No guardian shall act in virtue of his office except as a member and at a meeting of the board of guardians, except as in the said act is excepted.

Art. 2. The guardians shall, upon the day of the week, and the hour of the day, and at the place already appointed for holding the ordinary meetings, hold an ordinary meeting once at the least in every week for the execution of their duties ; or so often as shall have been already prescribed by any orders of the Poor Law Commissioners, and may, when they think fit, change the period, time, and place, with the consent of the Poor Law Commissioners previously had and obtained.

Art. 3. The guardians shall, at the first meeting after every annual election of guardians, elect out of the whole number of guardians a chairman and a vice-chairman, who shall continue respectively to act as such until the next annual election of guardians shall take place, if they so long continue respectively to be guardians.

Art. 4. If the guardians shall at any time deem fit, they may elect two vice-chairmen, and shall determine the precedence of such vice-chairmen ; and, according to such precedence, the said vice-chairmen shall thenceforth preside and act as in the case when only one vice-chairman is elected.

Art. 5. If a chairman, or a vice-chairman, cease to be a guardian, or refuse, or become incapable, to act as chairman, or vice-chairman, before the expiration of the term of office, the guardians shall, within one month after the occurrence of the vacancy, refusal, or incapacity, elect some other guardian to be chairman or vice-chairman, as the case may be.

Art. 6. No act of any meeting of the guardians shall be valid, unless three guardians be present and concur therein.

Art. 7. If three guardians be not present at any meeting, an entry of that fact shall

(a) See *ante*, p. 701.

be made in the minute book by the clerk to the guardians, and the time for holding such meeting shall be deemed to have expired as soon as the said entry shall have been made. But one hour at least shall be allowed to elapse from the time fixed for the commencement of the meeting, before such entry shall be made.

Art. 8. If three or four or more guardians be present at any ordinary meeting, such three, or the majority of such four or more guardians, may adjourn the same to the day of the next ordinary meeting, or to some other day previous to the next ordinary meeting.

Art. 9. An extraordinary meeting of the guardians may be summoned to be held at any time, upon the requisition of any two guardians, addressed to the clerk of the guardians. Every such requisition shall be made in writing according to the form (A.) hereunto annexed, and no business other than the business specified in the said requisition shall be transacted at such extraordinary meeting.

Art. 10. Notice of every change in the period, time, or place of holding any meeting, and notice of the adjournment of any meeting, and notice of every extraordinary meeting, shall be given in writing to every guardian. Every such notice shall be respectively according to the Forms B., C., and D., hereunto annexed, and shall be given or sent by the clerk to every guardian, or left at his place of abode, two days, if practicable, before the day appointed for the meeting to which it relates.

Art. 11. If any case of emergency arise, requiring that a meeting of the guardians should immediately take place, they, or any three of them, shall meet at the ordinary place of meeting, and take such case into consideration, and may make an order or orders thereon.

Proceedings of the Board (a).

Art. 12. At every meeting the chairman, or, in his absence, a vice-chairman, shall preside; and if at the commencement of any meeting the chairman or vice-chairman be absent, the guardians present shall elect one of themselves to preside at such meeting as chairman thereof, until the chairman or a vice-chairman may take the chair.

Art. 13. All questions at any meeting consisting of more than three guardians shall be determined by a majority of the votes of the guardians present thereat.

Art. 14. At every ordinary meeting of the guardians, the business shall, as far as may be convenient, be conducted in the following order:—

Firstly.—The minutes of the last ordinary meeting, and of any other meeting which may have been held since such ordinary meeting, shall be read to the guardians and signed by the chairman presiding at the meeting at which such minutes are read, and an entry of the same having been so read shall be made in the minutes of the day when read.

Secondly.—The guardians shall dispose of such business as may arise out of the minutes so read, and shall give the necessary directions thereon.

Thirdly.—They shall read the report of the state of the workhouse or workhouses, and shall proceed to give the necessary directions respecting all applications for relief made since the last ordinary meeting, and also respecting the amount and nature of relief to be given and continued to the paupers then in the receipt of relief, until the next ordinary meeting, or for such other time as such relief may be deemed to be necessary.

Fourthly.—They shall hear and consider any application for relief which may be then made, and determine thereon.

Fifthly.—They shall examine all books and accounts relative to the relief of the paupers of the union, give all needful directions concerning the management and discipline of the workhouse or workhouses of the union, and the providing of furniture and stores, and other articles.

Sixthly.—They shall make the necessary orders on the overseers or other proper authorities of the several parishes in the union for providing such sums as may be lawfully required by the guardians on account of their respective parishes.

Seventhly.—They shall give the necessary directions respecting applications to justices for orders of bastardy, and respecting pensions payable to paupers of the union.

Eighthly.—They shall transact any such business as may not fall within any of the above classes.

Contracts.

Art. 15. All contracts to be entered into on behalf of the union relating to the maintenance, clothing, lodging, employment, or relief of the poor, or for any other purpose relating to or connected with the general management of the poor, shall be made and entered into by the guardians.

Art. 16. The guardians shall require tenders to be made in some sealed paper for the supply of all provisions, fuel, clothing, furniture, or other goods, or materials, the consumption of which may be estimated, one month with another, to exceed ten pounds per month, and all provisions, fuel, clothing, furniture, or other goods, or materials, the cost of which may be reasonably estimated to exceed fifty pounds in a single sum, to be paid for by the guardians, and shall purchase the same upon contracts to be entered into after the receipt of such tenders.

Art. 17. Any work or repairs to be executed in the workhouse, or the premises connected with the workhouse, or any fittings to be put up therein, which shall respectively be reasonably estimated to exceed the cost of fifty pounds in one sum shall be contracted for by the guardians, on sealed tenders, in the manner prescribed in Articles 16 and 18.

Art. 18. Notice of the nature and conditions of the contract to be entered into, of the last day on which tenders will be received, and the day on which the tenders will be opened, shall be given in some newspaper circulating in the union, not less than ten days previous to the last day on which such tenders shall be received; and no tender shall be opened by the clerk, or any guardian, or other person, prior to the day specified in such notice, or otherwise than at a meeting of the said guardians.

Art. 19. When any tender shall be accepted, the party making the tender shall, in pursuance of these regulations, enter into a contract in writing with the guardians, containing the terms, conditions, and stipulations mutually agreed upon, and whenever the guardians shall deem it advisable, the party contracting shall in like manner find one or more surety or sureties, who shall enter into a bond in such penalty as the guardians shall think fit, conditioned for the due performance of the contract, or shall otherwise secure the same.

Art. 20. Provided always, that if from the peculiar nature of any furniture, goods, materials, or fittings to be supplied, or of any work or repairs to be executed, it shall appear to the guardians desirable that a specific person or persons be employed to

supply or execute the same, without requiring sealed tenders as hereinbefore directed, it shall be lawful for the board of guardians, with the consent of the Poor Law Commissioners first had and obtained, to enter into a contract with such person or persons as may be deemed best qualified to supply or execute the same, and to require such sureties and securities as are specified in Article 19.

Orders for Contributions and Payments.

Art. 21. The guardians shall make orders on the overseers or other proper authorities of every parish of the union, from time to time, for the payment to the guardians of all sums which may be required by the guardians for the relief of the poor of the parish, and for the contribution of the parish to the common fund of the union, and for any other expenses chargeable by the guardians on the parish.

Art. 22. Every such order shall be given according to the form (E) hereunto annexed. It shall be signed by the presiding chairman of the meeting, and two other guardians present thereat, and shall be countersigned by the clerk to the guardians.

Art. 23. The guardians shall pay every sum greater than three pounds by an order, which shall be drawn upon the treasurer of the union, and shall be signed by three of the guardians at a meeting, and shall be countersigned by the clerk of the guardians.

Security of Officers.

Art. 24. The guardians shall require every person appointed, or to be hereafter appointed, to the offices of treasurer, master of the workhouse, or relieving officer, to give a bond in such penal sum as the guardians shall think fit, with two sufficient sureties, conditioned for the due and faithful performance of the duties of the office; and shall from time to time call upon such officers to supply a fresh surety in place of any such surety who may die, or become bankrupt or insolvent, or be released from his obligation.

Art. 25. The guardians shall once in every year, that is to say, at the audit next after the 25th day of March, cause every person having the custody of bonds given by any officer of the union to produce such bonds to the auditor for his inspection; and the fact of such inspection, and any defects apparent in the said bonds, shall be reported by the auditor to the board of guardians.

Explanation of Terms.

Art. 26. Whenever the word "union" is used in this order, it shall be taken to include not only an union of parishes formed under the provisions of the herein-before recited act, but also any union of parishes incorporated or united for the relief or maintenance of the poor under any local act of parliament.

Art. 27. Whenever the word "guardians" is used in this order, it shall be taken to include not only guardians appointed or entitled to act under the provisions of the said herein-before recited act, but also any governors, directors, managers, or acting guardians entitled to act in the ordering of relief to the poor from the poor rates under any local act of parliament.

Art. 28. Whenever the word "parish" is used in this order, it shall be taken to include any place maintaining its own poor, whether parochial or extra-parochial.

Art. 29. Whenever, in describing any person or party, matter or thing, the word importing the singular number or the masculine gender only is used in this order, the same shall be taken to include, and shall be applied to, several persons or parties as

well as one person or party, and females as well as males, and several matters or things as well as one matter or thing, respectively, unless there be something in the subject or context repugnant to such construction.

Art. 30. Whenever in this order any article is referred to by its number, the article of this order bearing that number shall be taken to be signified thereby.

Form (A.)

REQUISITION FOR AN EXTRAORDINARY MEETING OF GUARDIANS.

To the clerk to the guardians of the — union.

We the undersigned, being two of the guardians of the poor of the — union, do hereby require an extraordinary meeting of the guardians of the said union to be summoned, to be holden at — on — the — day of — 18 — at — o'clock in the forenoon, to take into consideration [*set out the motion.*]

} Guardians.

Form (B.)

NOTICE OF CHANGE OF PERIOD, TIME, OR PLACE OF MEETING.

To A. B., guardian of the poor of the — union.

Sir.—You are hereby informed that the next ordinary meeting of the guardians of the poor of the — union will take place at — on — the — day of —, 18 —, at — o'clock in the forenoon, for the transaction of business; and that meetings of the said guardians will henceforth be held [*weekly or fortnightly as the case may be*] at the same place, on — in every week, at the same hour of — in the —.

Signature of clerk to the guardians.

Form (C.)

NOTICE OF AN ADJOURNED MEETING OF GUARDIANS.

To A. B., guardian of the poor of the — union.

Sir.—This is to give you notice, that an adjourned meeting of the guardians of the poor of the — union will be held at — on — the — day of — 18 —, to take into consideration [*set out the motion*] which meeting you are hereby requested to attend.

Signature of clerk to the guardians.

Form (D.)

NOTICE OF AN EXTRAORDINARY MEETING OF GUARDIANS.

To A. B., guardian of the poor of the — union.

Sir.—I am directed by C. D. and E. F., two of the guardians of the poor of the — union, to summon an extraordinary meeting of the guardians of the poor of the said union at — on — the — day of — 18 —, at — o'clock in the forenoon, to take into consideration [*set out the motion*]; which meeting you are hereby requested to attend.

Signature of clerk to the guardians.

Form (E.)

To A. B. and C. D., overseers [*or —*] of the parish of —.

You are hereby ordered and directed to pay to F. G. — of — on behalf of the guardians of the poor of the — union on the — day of — at — the sum of

— pounds, — shillings, and — pence, from the poor rates of the parish of —, towards the relief of the poor thereof, and to the contribution of the parish to the common fund of the union, and such other expenses as are chargeable by the said guardians on the said parish, and to take the receipt of the said F. G. for the said sum of £ —.

Given under our hands, at a meeting of the guardians of the poor of the said — union, held on the — day of — 18 —.

(Signed) X. Y. Presiding Chairman.
W. X. } Guardians.
U. V. }

————— Counter-signature of the clerk to the guardians.

[The schedule appears to contain the names of all the unions under the jurisdiction of the Commissioners.]

Given under our hands and seal of office, this 20th day of April, in the year 1842.

(Signed) G. C. LEWIS.
EDMUND W. HEAD.

ORDER AS TO THE DUTIES OF OFFICERS (a).

To the Guardians of the Poor of the several Unions, &c.

We, the Poor Law Commissioners, in pursuance of the authorities vested in us by an act passed in the fifth year of the reign of his late majesty King William the Fourth, intituled, "An Act for the Amendment and better Administration of the Laws relating to the Poor in England and Wales," do hereby rescind so much of any order or orders heretofore issued by the Poor Law Commissioners to each of the several unions named in the schedule hereunto annexed, as is in any way affected or altered by the regulations herein contained, except in so far as the said orders, or any of them, may have authorized the appointment of the existing officers.

And we do hereby order, direct, and declare, with respect to each and every of the unions named in the said schedule, as follows:—

Art. 1. The board of guardians shall, whenever any of the undermentioned offices may be vacant, appoint a fit person to perform respectively the duties specified by the rules and regulations of the Poor Law Commissioners in force at the time to belong to each of the two following officers:—

1. Clerk to the guardians,
2. Treasurer of the union,

and also whenever such vacancy shall occur, or it may otherwise be requisite, so many fit persons as may be required for performing respectively the duties specified as aforesaid to belong to each of the following officers:—

1. District medical officer,
2. Relieving officer,

and also such assistants as the board of guardians, with the consent of the Poor Law Commissioners, shall deem necessary for the efficient performance of the duties of the several offices above enumerated.

Art. 2. The said officers shall respectively perform such duties as may be required

(a) See *ante*, p. 702.

of them by the rules and regulations of the Poor Law Commissioners in force at the time, together with all such other duties, conformable with the nature of their respective offices, as the said board of guardians may lawfully require them to perform.

Provided always, that every regulation applying to any officer holding his office under this order shall apply to any officer of the like denomination appointed by the guardians, although such officer may have been appointed before this order shall have come into force.

Art. 3. The board of guardians shall from time to time, on any change in the division of the union into districts for general and medical relief, or in the assignment of relieving officers and medical officers to such districts, report every such change to the Poor Law Commissioners for their approbation.

Mode of Appointment.

Art. 4. Every officer and assistant, to be appointed under this order, shall be appointed by a majority of the guardians present at any meeting of the board, consisting of more than three guardians, and every such appointment shall, as soon as the same shall have been made, be reported to the Poor Law Commissioners by the clerk to the guardians.

Art. 5. No appointment to the office of clerk, treasurer, district medical officer, or relieving officer, shall be made under this order, unless notice that such appointment will be made shall have been given at one of the two ordinary meetings of the board next preceding the meeting at which the appointment shall be made, or unless an advertisement giving notice of such appointment shall have appeared in some public paper by the direction of the guardians, at least seven days before the day on which such appointment shall be made.

Qualification of Officers.

Art. 6. No person shall be appointed a district medical officer, who shall not be at the time of such appointment duly licensed to practise as a medical man, and be otherwise qualified as may be required by the rules and regulations of the Poor Law Commissioners in force at the time.

Art. 7. No person shall be appointed a relieving officer, unless he shall be able to keep accounts, and unless he reside in the district for which he may be appointed to act, devote his whole time to the performance of the duties of his office, not follow any trade or profession, or enter into any other service, and undertake to give one month's notice previous to resigning the office or quitting the service, or to forfeit one month's amount of salary, to be deducted as liquidated damages from the amount of salary due at the time of such resignation.

Provided always, that the guardians may, with the consent of the Poor Law Commissioners previously obtained, dispense with any of the conditions specified in this article, which the said Commissioners may deem inexpedient.

Salaries of the Officers.

Art. 8. The board of guardians shall pay to the several officers and assistants appointed to or holding any office or employment under this order, such salaries or remuneration as the Poor Law Commissioners may from time to time direct or approve.

Art. 9. The salary of every officer or assistant appointed to or holding any office

or employment under this order, shall be payable up to the day on which he ceases to hold such office or employment, and no longer.

Security.

Art. 10. Every person appointed to or holding the office of treasurer, or relieving officer, and every other officer whom the board of guardians shall require so to do, shall respectively give a bond in such penal sum as the board of guardians shall think fit, with two sufficient sureties, conditioned for the due and faithful performance of the duties of the office; and every such officer shall give immediate notice to the board of guardians of the death, insolvency, or bankruptcy of either of such sureties, and shall, when required by the guardians, supply a fresh surety in the place of any such surety who may die, or become bankrupt, or insolvent.

Continuance in Office and Suspension of Officers—Supply of Vacancies.

Art. 11. Every officer appointed to or holding any office under this order, other than a district medical officer, shall continue to hold the same until he shall die, or resign, or be removed by the Poor Law Commissioners, and every assistant may be dismissed by the board of guardians without the consent of the Poor Law Commissioners; but every such dismissal, and the grounds thereof, shall be reported to the Poor Law Commissioners.

Art. 12. The board of guardians may, at their discretion, suspend from the discharge of his duties any district medical officer or relieving officer, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the Poor Law Commissioners for their decision thereon.

Art. 13. If any officer, or assistant, appointed to or holding any office or employment under this order, be at any time prevented by sickness or accident, or other sufficient reason, from the performance of his duties, the guardians may appoint a fit person to act as his temporary substitute, and may pay him a reasonable compensation for his services, and every such appointment shall be reported to the Poor Law Commissioners as soon as the same shall have been made.

Provided always, that if any district medical officer be temporarily incapacitated from performing his duties, it shall be competent to him to recommend to the guardians a duly qualified medical practitioner in order to perform his duties during his temporary incapacity.

Art. 14. The vice-chairman, or some guardian to be appointed by the board of guardians, may perform any of the duties assigned to the clerk, until any vacancy in the office shall have been filled, or until a substitute be appointed in the case of the sickness, accident, or absence of the clerk.

Art. 15. When any officer appointed to or holding any office specified in Article 1, shall die, or resign, the board of guardians shall, as soon as conveniently may be after such death, or resignation, give notice thereof to the Poor Law Commissioners, and shall proceed to make a new appointment in the manner prescribed by the above regulations.

Duties of the Officers.

Art. 16. And we do hereby define and specify the duties of the several officers appointed to or holding their offices under this order, and direct the execution thereof, to be as follows :—

Duties of the Clerk to the Guardians (a).

Art. 17. The duties of the clerk to the guardians shall be :—

- No. 1. To attend all meetings of the board of guardians, and to keep punctually minutes of the proceedings at every meeting, to enter the said minutes in a book, and to submit the same so entered in the said book to the presiding chairman at the succeeding meeting to be confirmed by the board, and authenticated by the signature of such chairman, as a true record of the proceedings of the board.
- No. 2. To keep all accounts, books of accounts, minutes, books, and other documents, as required of him by the regulations of the Poor Law Commissioners, or relating to the business of the board of guardians, and from time to time to produce all such books, other documents, and vouchers for the same, together with the bonds of any officers which may be in his custody, to the auditor of the union, at such place and time, and in such manner, as may be required by the regulations of the said Commissioners in force at the time.
- No. 3. To peruse and conduct the correspondence of the board of guardians according to their directions, and to preserve the same and all letters, books, papers, and documents belonging to the union, or entrusted to him by the board of guardians, and to make all necessary copies thereof.
- No. 4. To receive all requisitions of guardians for extraordinary meetings, and to summon such meetings accordingly, and to make, sign, and send all notices required to be given to the guardians by any order of the Poor Law Commissioners.
- No. 5. To countersign all orders legally made by the board of guardians on overseers for the payment of money, and all orders legally drawn by the board of guardians upon the treasurer of the union.
- No. 6. To communicate to the several officers and persons engaged in the administration of relief within the union, all orders and directions of the Poor Law Commissioners, or of the board of guardians; and so far as may be, to give the instructions requisite for the prompt and correct execution of all such orders and directions, and to examine and report on any neglect or failure therein which may come to his knowledge.
- No. 7. To conduct all applications necessary to be made by or on behalf of the board of guardians to any justice or justices at their special, petty, or general sessions, and if he be an attorney or solicitor, to perform and execute all legal business connected with the union, or in which the board of guardians shall be engaged, except actions at law or suits in equity, without charge for anything beyond disbursements.
- No. 8. To prepare, after every ordinary meeting of the board of guardians, a statement in the form (A.) hereunto annexed, and punctually to transmit the same to the assistant poor law commissioner having the superintendence of the union.
- No. 9. To prepare and transmit all answers or returns as to any question or matter connected with or relating to the administration of the laws for the relief of the poor in the union, or to any other business of the union, which the Poor Law Commissioners, or any assistant commissioner, may lawfully require from the board of guardians or from himself.
- No. 10. When required by the regulations of the Poor Law Commissioners, to con-

duct duly and impartially, and in strict conformity with the said regulations in force at the time, the annual or other election of guardians.

No. 11. To observe and execute all orders and directions of the board of guardians applicable to his office.

Duties of the Treasurer (a).

Art. 18. The duties of the treasurer shall be :—

No. 1. To receive all monies tendered to be paid to the board of guardians, and to place the same to their credit.

No. 2. To pay, out of any monies for the time being in his hands belonging to the board of guardians, all orders for money, which shall be drawn upon him on behalf of such guardians, and shall be signed by the chairman and two other of such guardians, and shall be countersigned by the clerk, or the person for the time being acting as the clerk, as and when the same shall be presented at the house or usual place of business of the treasurer.

No. 3. To keep an account, under the proper dates, of all monies received and paid by him as such treasurer, and to render an account thereof to the board of guardians, when required by them to do so.

No. 4. Whenever there should not be funds belonging to the guardians in his hands as treasurer of the union, to report in writing the fact of such deficiency to the Poor Law Commissioners.

No. 5. To submit the above-mentioned account to the auditor at the periods of audit, duly notified, in pursuance of the regulations of the Poor Law Commissioners in force at the time.

Duties of a District Medical Officer. (b)

Art. 19. Every district medical officer shall comply with the regulations and provisions of an order (c) of the Poor Law Commissioners, bearing date the twelfth day of March, in the year of our Lord one thousand eight hundred and forty-two, or any other order of the Poor Law Commissioners in force at the time, and shall also perform the following duties :—

No. 1. To attend duly and punctually upon all poor persons requiring medical or surgical assistance within the district of the union to which he shall be appointed, and to supply the requisite medicines and medical and surgical appliances to such persons, whenever he shall be thereunto required by a written or printed order of the board of guardians, or of any relieving officer of the union, or of an overseer of the poor in cases of sudden and urgent necessity, or by the production of a ticket on the part of any poor person whose name shall be included in any list of persons actually receiving relief, directed to be prepared by Article 16 (d) of the said order of the Poor Law Commissioners, bearing date the twelfth day of March, in the year one thousand eight hundred and forty two, or by any other order of the said Commissioners in force at the time.

No. 2. To give a certificate under his hand in every case to the board of guardians, or relieving officer, or the pauper on whom he is attending, of the sickness of such pauper or other cause of his attendance, when required to do so.

No. 3. To make a weekly return to the board of guardians in a book prepared ac-

(a) See *ante*, p. 703.

(b) See *ante*, p. 709.

(c) See *ante*, p. 1489.

(d) See *ante*, p. 1493.

cording to the form B. hereunto annexed, and to insert therein the date of every attendance, and to make an annual index to the same, with the names arranged alphabetically, according to the form C. hereunto annexed, and to deliver the same when completed to the board of guardians

- No. 4. To give to the board of guardians, or to any relieving officer, when required, any reasonable information respecting the case of any pauper under his care, to make any such written report relative to any sickness prevalent among the paupers in the workhouse, as the board of guardians or the Poor Law Commissioners may require of him, and to attend the board of guardians when summoned by them

Duties of a Relieving Officer (d).

Art. 20. The duties of every relieving officer shall be —

- No. 1. To attend all ordinary meetings of the board of guardians, and to attend all other meetings when summoned by the clerk
- No. 2. To receive all applications for relief made to him within his district, or relating to any parish situated within his district, and forthwith to examine into the circumstances of every case by visiting the home of the applicant (if situated within his district), and by making all necessary inquiries into the state of health, the ability to work, and the means of such applicant, and to report the result of such inquiries in the prescribed form to the board of guardians at their next ordinary meeting.
- No. 3. In any case of sickness or accident requiring medical or surgical relief, to procure medical or surgical assistance by giving an order on the district medical officer, or by such other means as the urgency of the case may require
- No. 4. To ascertain from time to time from the district medical officer the names of any poor persons, whom such medical officer may have attended or supplied with medicines, without having received an order from himself to that effect.
- No. 5. In every case of sickness, or accident, of any poor person receiving medical relief, as soon as may be, and from time to time afterwards, to visit the home of such sick person, and until the next ordinary meeting of the board of guardians, to supply such relief (not being in money) as the case on his own view, or on the certificate of the district medical officer, may seem to require
- No. 6. In every case of sudden and urgent necessity, to afford such relief to the destitute person as shall be requisite, either by giving such person an order of admission to the workhouse, and conveying him thereto if necessary, or by affording him relief out of the workhouse, provided that the same shall not be given in money, whether such destitute person be settled in any parish comprised in the union or not.
- No. 7. To report to the board of guardians at their ordinary meetings all cases reported to him by an overseer of the poor of any parish in the district for which he shall be appointed to act, in which relief shall have been given by such overseer.
- No. 8. To give all reasonable aid and assistance at the request of any other relieving officer of the union, by examining into the case of any applicant for relief, or administering relief to any pauper whose name has been entered on the books of such other relieving officer, and who may be within his own district.

(d) See *ante*, p. 704.

- No. 9. If required by the board of guardians, to apply to the persons appointed to pay the pensions payable to out-pensioners, and to receive the amounts which shall be payable to the board of guardians, and forthwith to pay the same to the treasurer on their account.
- No. 10. Duly and punctually to supply the weekly allowances of all paupers belonging to his district, and to relieve all paupers within his district to the amount and in the manner in which he may have been ordered to pay and relieve such paupers respectively by the board of guardians.
- No. 11. To keep a separate full and true account of all monies received and disbursed by him for or on account of the relief of the poor of each parish in the district for which he shall be appointed to act, and also of all articles received and given out by him for the relief of the out-door poor; to balance such account weekly, and to present the same to the clerk for his inspection and authentication before every ordinary meeting of the board of guardians, and to the board of guardians, at such meeting, for their approval.
- No. 12. In no case to take credit in his accounts or enter as paid or given any money or other articles, which shall not have been paid or given previously to the taking of such credit, or the making of such entry; and not to take credit in such accounts for any money paid to any tradesman or other person, without producing at the next ordinary meeting of the guardians a bill from such tradesman or other person.
- No. 13. To submit to the auditor of the union all his books, accounts, and vouchers, at such place and time and in such manner as may be required by the regulations of the said Commissioners in force at the time.
- No. 14. To assist the clerk to the guardians in conducting and completing the annual or other election of guardians, according to the regulations of the Poor Law Commissioners in force at the time.
- No. 15. To observe and execute all lawful orders and directions of the guardians applicable to his office.

Explanation of Terms.

Art. 21. Whenever the word "union" is used in this order, it shall be taken to include not only an union of parishes formed under the provisions of the hereinbefore recited act, but also any union of parishes incorporated or united for the relief or maintenance of the poor under any local act of parliament.

Art. 22. Whenever the word "guardians" is used in this order, it shall be taken to include not only guardians appointed or entitled to act under the provisions of the said hereinbefore recited act, but also any governors, directors, managers or acting guardians entitled to act in the ordering of relief to the poor from the poor rates under any local act of parliament.

Art. 23. Whenever the word "parish" is used in this order, it shall be taken to include any place maintaining its own poor, whether parochial or extra-parochial.

Art. 24. Whenever in describing any person or party, matter or thing, the word importing the singular number or the masculine gender only is used in this order, the same shall be taken to include and shall be applied to several persons or parties as well as one person or party, and females as well as males, and several matters or things as well as one matter or thing respectively, unless there be something in the subject or context repugnant to such construction.

Art. 25. Whenever in this order any article is referred to by its number, the article of this order bearing that number shall be taken to be signified thereby.

Form A.

Union.					
Day of meeting _____ day of _____ 184					
Day and hour to which adjourned _____					
Number of guardians present _____ Chairman.					
Amount of Treasurer's balance due to the Union _____					
WEEKLY RETURN OF THE IN-DOOR AND OUT-DOOR PAUPERS.					
Week of the — Quarter.					
Workhouse.	In the house at commencement of the week.	Admitted.	Discharged.	Dead.	Remain- ing.
<i>Men.</i>					
Able-bodied					
Temporarily disabled by sick- } ness or accident					
Old and infirm					
<i>Youths.</i>					
From 7 to 15 years					
<i>Boys.</i>					
From 2 to 7 years					
<i>Women.</i>					
Able-bodied					
Temporarily disabled					
Old and infirm					
<i>Girls.</i>					
From 7 to 15 years					
From 2 to 7 years					
<i>Infants.</i>					
Born					
Totals					
NUMBER OF PAUPERS BELONGING TO EACH RELIEVING OFFICER'S DISTRICT IN THE UNION.					
	In-door.	Out door.	Out-relief in		
			Kind.	Money.	
District No. 1. Mr. —, Relieving Officer					
District No. 2. Mr. —, Relieving Officer					
District No. 3. Mr. —, Relieving Officer					
Total Relief in Kind					
Ditto Money...					
Total....£					
1. Is there any Remark in the Visiting Committee's Book concerning any defect in the discipline or internal economy? If so, furnish a copy of the remark					
2. Does the number of paupers in the house exceed that fixed or sanctioned by the Poor Law Commissioners?					
3. Copy of any special minute made or notice of motion on the books					
			Signed —, Clerk to the Guardians.		
To —, Assistant Poor Law Commissioner.					
Sent this — day of —, 184 .					

Form B.

Week ending — day of — 184

Name.	Age.	Residence.	Parish to which chargeable.	Nature of Disease.	Days when attended.							Necessaries ordered to be given to the patient.	Present state or termination of the case.	Observations.
					S.	M.	T.	W.	Th.	F.	Sat.			

Form C.

INDEX.

Name of Patient.	Page of form B. in which the name of the patient first appears.	Day of termination of disease and event.

Given under our hands and seal of office, this 21st day of April, in the year 1842.

(Signed)

G. C. LEWIS.

EDMUND W. HEAD.

[The schedule contains the names of all the unions under the jurisdiction of the Commissioners.]

GENERAL ORDER—DUTIES OF OVERSEERS^(a).

To the guardians of the poor, &c.

We, the Poor Law Commissioners, in pursuance of the authorities vested in us by an act passed in the 5th year of the reign of his late Majesty King William the Fourth, intituled "An Act for the Amendment and better Administration of the Laws relating

(a) See *ante*, p. 681.

to the Poor in England and Wales," do hereby order, direct, and declare, with respect to each and every of the unions named in the schedule hereunto annexed, as follows :—

Duties of the Overseers.

Art. 1. If any overseer of the poor of any parish shall, in any case of sudden and urgent necessity, have given temporary relief to any poor person in articles of necessity, or, in any case of sudden and dangerous illness, shall have given an order for medical relief, the said overseer shall forthwith report such case in writing to the relieving officer of the district, or to the board of guardians of the union, and the amount of such relief or the fact of having made such order.

Art. 2. If any overseer of the poor of any parish receive an order under the hands and seals of two justices, according to the provisions of the said act, directing relief to be given to any aged or infirm person, without such person being required to reside in any workhouse, he shall forthwith transmit the same to the relieving officer of the district to be laid before the guardians at their next meeting, that they may be enabled without delay to give to the relieving officer the necessary directions as to the amount and nature of the relief to be given.

Art. 3. If any overseer receive an order for medical relief from any justice in case of sudden and dangerous illness, he shall, as soon as may be after complying with such order, report the fact of his having received the same, and the manner in which he has complied with it, in writing to the relieving officer of the district, or to the board of guardians of the union.

Art. 4. To perform such duties in connection with the election of guardians for the union, as may be imposed upon the overseers by any regulations of the Poor Law Commissioners in force at the time.

Art. 5. And we do further order and direct the overseers of the poor of every parish in the union—

1. From time to time to provide rate-books according to the form (A.) hereunto annexed ; and duly and punctually to make the entries therein of the several matters mentioned in the headings of the several columns of the said form ; and to cause every rate for the relief of the poor in the township, and the allowance of such rate by the justices, to be recorded in the said rate-book.
2. To pay over from time to time out of the poor-rates collected all such sums as by any order of the guardians expressed to them in writing, according to the form set forth in the order of the Poor Law Commissioners, bearing date the 20th day of April instant, shall be directed to be provided from the poor-rates of the parish ; and to pay over such sums to such person or persons, at such times and places as by the same order shall be directed, and to take the receipt of such person or persons ; and to produce such order and such receipt as their vouchers for such payments before the auditor of the said union in passing their quarterly accounts.
3. To submit, within 40 days after each of the following days, namely, Lady-day, Midsummer-day, Michaelmas-day, and Christmas-day, to the auditor of the union, a distinct account and balance-sheet, exhibiting the amount collected by them and the amount disbursed by them during the previous quarter, together with the proper vouchers for the same.
4. To enter in some book, to be from time to time provided for that purpose, the names and addresses of the owners and proxies, who shall send statements of

Form (B.)

BOOK FOR REGISTRY OF OWNERS OF PROPERTY AND PROXIES.

Union.

Parish of

No.	Name of Owner.	Address.	Property in respect whereof right to vote is claimed.	No. of reference to Rate-Book.	Aggregate Amount of Assessment.	Name of Proxy.	Address of Proxy.	No.	Date on which claim received.

We do certify that the above is a full and correct register and entry of the claims to vote of owners of property and proxies in the said parish.

(Signed)

} Overseers.

[The schedule contains the names of all the unions under the jurisdiction of the Commissioners.]

OUT-DOOR LABOUR TEST ORDER (a).

To the guardians of the poor, &c.

We, the Poor Law Commissioners, in pursuance of the authorities vested in us by an act passed in the fifth year of the reign of his late Majesty King William the Fourth, intituled "An Act for the Amendment and better administration of the Laws relating to the Poor in England and Wales," do hereby order, direct, and declare, with respect to each and every of the unions named in the schedule hereunto annexed, as follows:

Art. 1. Every able-bodied male pauper receiving relief from any parish within the union, and not relieved in the workhouse, shall be relieved in the following manner: that is to say;

Half at least of the relief given to such pauper shall be given in food, clothing, and other articles of necessity.

No such pauper shall receive relief from the guardians of the union, or any of their officers, or any overseer of any parish in the union while he is employed for wages or other hire or remuneration by any person; but every such pauper so relieved shall be set to work by the guardians.

Art. 2. The place or places at which able-bodied male paupers shall be so set to work in the union, the sort or sorts of work in which they or any of them shall be employed, the times and mode of work, and all other matters relating to the employment of such able-bodied paupers, shall be fixed and regulated in such manner as the Poor Law Commissioners shall direct, upon a report being made to them by the

(a) See *ante*, p. 707.

guardians respecting the employment of such able-bodied paupers, which report the guardians shall transmit to the said Commissioners within fourteen days after the day when this order shall come into force, and from time to time afterwards as the Poor Law Commissioners may require.

Art. 3. The guardians shall, upon the direction of the Poor Law Commissioners, appoint, either for a definite or indefinite term, an officer for the superintendence of the paupers employed under Articles 1 and 2, to be styled "Superintendent of Pauper Labour," and an assistant or assistants to such officer, and every superintendent and assistant who may be so appointed shall comply with the regulations of this order, and any directions which the Poor Law Commissioners may give in pursuance of Article 2.

Art. 4. Every superintendent and assistant to be appointed under this order shall be appointed by a majority of the guardians present at a meeting of the board, and every such appointment shall, as soon as the same shall have been made, be reported to the Poor Law Commissioners by the clerk to the guardians.

Art. 5. No appointment to the office of superintendent shall be made under this order, unless notice that such appointment will be made shall have been given at one of the two ordinary meetings of the board of guardians next preceding the meeting at which the appointment shall be made, or unless an advertisement giving notice of such appointment shall have appeared in some public paper by the direction of the guardians, at least seven days before the day on which such appointment shall be made.

Art. 6. The guardians shall pay to the superintendent, and his assistant or assistants, such salaries or remuneration as the Poor Law Commissioners shall from time to time direct or approve, and the salary of every superintendent or assistant appointed under this order shall be payable up to the day on which he ceases to hold his office, and no longer.

Art. 7. Every person appointed to the office of superintendent of pauper labour under this order shall continue to hold the same during the term for which he shall be appointed, until he shall die, or resign, or be removed by the Poor Law Commissioners, but the guardians may, at their discretion, suspend from the discharge of his duties any such superintendent, and shall, in case of every such suspension, forthwith report the same, together with the cause thereof, to the Poor Law Commissioners for their decision thereon.

Art. 8. Every assistant appointed under this order may be dismissed by the guardians, without the consent of the Poor Law Commissioners, but every such dismissal and the grounds thereof shall be reported to the Poor Law Commissioners.

Art. 9. If any superintendent appointed under this order be at any time prevented by sickness, or accident, or other sufficient reason, from the performance of his duties, the guardians may appoint a fit person to act as his temporary substitute, and may pay him a reasonable compensation for his services, and every such appointment shall be reported to the Poor Law Commissioners by the clerk to the guardians as soon as the same shall have been made.

Art. 10. When any superintendent appointed under this order shall die or resign, the guardians shall, as soon as conveniently may be after such death or resignation, give notice thereof to the Poor Law Commissioners, and shall proceed to make a new appointment in the manner prescribed by the above regulations.

Art. 11. Provided always, that the regulations in Article 1 shall not apply in the

case of any able-bodied male pauper who shall come within any of the following descriptions; that is to say,

- 1st. Where such pauper shall receive relief on account of sudden and urgent necessity.
- 2nd. Where such pauper shall receive relief on account of any sickness, accident, or bodily or mental infirmity affecting such pauper, or any of his family.
- 3rd. Where such pauper shall receive relief for the purpose of defraying the expenses, either wholly or in part, of the burial of any of his family.
- 4th. Where such pauper shall be confined in any gaol or place of safe custody.
- 5th. Where any able-bodied male person shall not reside within the union, but the wife, child, or children of such person shall reside within the same, the guardians may afford relief to such wife, child, or children, according to their discretion.

Art. 12. In every case in which the guardians or any of their officers may allow relief on account of sickness, accident, or infirmity, to any able-bodied male person, or to any member of the family of any able-bodied male person, without setting such person to work, according to the directions in Article 1, an extract from the medical officer's weekly report (if any such officer shall have attended the case), stating the nature of such sickness, accident, or infirmity, shall be specially entered in the minutes of the proceedings of the guardians of the day on which the relief is ordered or subsequently allowed.

But if the guardians shall think fit, a certificate under the hand of a medical officer of the union, or of the medical practitioner in attendance on the party, on account of whose sickness, accident, or infirmity, relief shall be allowed, shall be laid before the board, stating the nature of such sickness, accident, or infirmity, and a copy of the same shall be in like manner entered in the minutes.

Art. 13. It shall not be lawful for the guardians of the union, or any of their officers, or for any overseer of any parish in the union, to pay the rent, wholly or in part, of any pauper: provided always, that nothing in this article contained shall apply to any shelter or temporary lodging procured in any case of sudden and urgent necessity or mental imbecility.

Art. 14. If the guardians of the union shall depart in any particular instance from any of the regulations hereinbefore contained, and shall, within fifteen days after such departure, report the same and the grounds thereof to the Poor Law Commissioners, and if the Poor Law Commissioners shall approve of such departure, then the relief granted in such particular instance shall, if otherwise lawful, not be deemed to be unlawful, or be subject to be disallowed.

Art. 15. No relief, which shall be contrary to any regulation in this order, shall be given by way of loan; and every relief which may be given to or on account of any person above the age of twenty-one, or to his wife or any part of his family under the age of sixteen, under Articles 1, 11, or 12, may, if the guardians shall think fit, be given by way of loan.

Art. 16. Whenever the word "parish" is used in this order, it shall be taken to signify any place separately maintaining its own poor.

Art. 17. Whenever in this order any article is referred to by its number, the article of this order bearing that number shall be taken to be signified thereby.

SCHEDULE,

Containing the Names of the Unions to which the present Order applies.

CARLISLE UNION, in the county of Cumberland.

EASINGTON UNION, in the county of Durham.

KEIGHLEY UNION, in the county of York.

NEWCASTLE-UPON-TYNE UNION, in the county of the town of Newcastle-upon-Tyne and county of Northumberland.

SUNDERLAND UNION, in the county of Durham.

Given under our hands and seal of office, this 30th day of April, in the year 1842.

(Signed)

G. C. LEWIS.

EDMUND W. HEAD.

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